United States Court of Appeals

for the Second Circuit

APPENDIX

76-7565

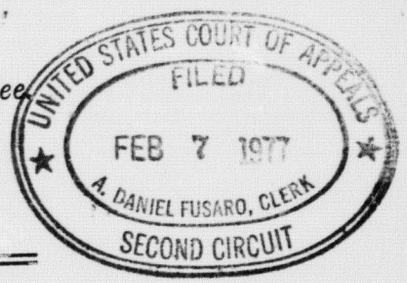
United States Court of Appeals

FOR THE SECOND CIRCUIT

PITTSBURGH COKE & CHEMICAL COMPANY,
Plaintiff-Appellant,

—against—

LOUIS J. BOLLO,
Defendant-Appellee.



APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX

(Volume 1—pages 1 to 528)

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Letter dated October 30, 1968 from Bendix EC to Louis Bollo confirming reduction in discount for rotors, stators and linings (in evidence) (true copy).	PX-20.	1009

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Johnston Notes re Standard Aircraft (in evidence).	DX-E.	1050-1052
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Letter dated January 25, 1963 from Whittaker Controls and Guidance regarding distributorship agreement with Standard Aircraft (in evidence).	DX-J.	1064-1065
Letter dated July 27, 1970 from Whittaker Corporation to Standard Aircraft terminating Whittaker's distributorship agreement with Standard Aircraft as of February 1, 1971 (in evidence).	DX-K.	1066
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Standard Aircraft Offering Circular dated August 3, 1959 (in evidence).	DX-T.	1097-1112
Standard Aircraft blank inventory form (in evidence).	DX-U.	1113
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Letter dated January 4, 1968 from Louis Bollo to Whittaker Corporation re "Reacquisition of Whittaker Components" (in evidence).	DX-Z.	1161-1162
Letter dated February 21, 1968 from Whittaker Corporation to Louis Bollo re supplying surplus material (in evidence).	DX-AA.	1163
Letter dated March 15, 1967 from Bendix N&C (Eclipse-Pioneer) to Jerry Bollo, re 747 autopilot system (in evidence).	DX-BB.	1164-1165
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August 1, 1969 Agreement between Eastern Air Lines, Inc. and Standard Aircraft (in evidence).	DX-EE.	1171-1174
April 1, 1969 Master Distributor Sales Agreement between Bendix Corporation and Standard Aircraft (in evidence).	DX-FF.	1175-1194

Telegram dated June 27, 1969 re capital structure of Standard Aircraft as of 12/31/68 and 1968 sales to certified carriers (in evidence).	DX-GG.	1195
Letter dated March 18, 1969 from Louis Bollo to Pittsburgh Coke & Chemical Company re registration statement (in evidence).	DX-HH.	1196-1197
Letter dated May 14, 1969 from P. B. McDowell to Louis Bollo re prospects for doing business with American Flyers Airline (in evidence).	DX-II.	1198-1200
Letter dated May 28, 1969 from Louis Bollo to P. B. McDowell enclosing Standard Aircraft first quarter 1969 financial statements (in evidence).	DX-JJ.	1201-1210
December 31, 1968 Annual Report of Standard Aircraft and subsidiaries (in evidence).	DX-KK.	1211-1231
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APPEAL

McAHER, J. ~~ROSLING~~, J.

TITLE OF CASE

PITTSBURGH COKE & CHEMICAL COMPANY

-against-

LOUIS J. BOLLO

ATTORNEYS

For Plaintiff: Cahill, Gordon, Sonnett, Reindel & Ohl
80 Pine St. NYC 10005
944-7400

For Defendant:
Paul, Weiss, Goldberg, Rifkind Wharton & Garrison, Esqs.
345 Park Ave. N.Y. 10022
935-8000

BASIS OF ACTION: VIOLATION OF S.E.C.

SEEKS: $2,400,000.00

JURY TRIAL CLAIMED ON DEMAND

DATE	PLAINTIFF'S ACCOUNT	RECEIVED		DISBURSED		DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
1/18/71	Complaint	15	00						
3-19-71	Paid to Treas.			15					
4-16-71	Appeal	5	00						

ABSTRACT OF COSTS

TO WHOM DUE	AMOUNT	

RECEIPTS, REMARKS, ETC.

71C 305 • PITTSBURGH COKE & CHEMICAL CO. v. LOUIS J. BOLLO

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
3/18/71	Complaint Filed. Summons Issued.	1	J55
3-26-71	Summons returned and filed. Deft srvd on 3-23-71.	2	
4-12-71	By ROSLING, J.- Order on stip filed extending time for deft to answer complaint to May 12, 1971. (P/C mailed to attys) H/D	3	
4-13-71	Amended Complaint filed	4	
5-20-71	Pltff's Notice to take Deposition of Deft. upon oral examination Filed.	5	
5-20-71	By ROSLING, J.-Order extending Deft's time to answer complaint to 5-26-71. Filed.	6	
6-3-71	By ROSLING, J.- Order on stip filed extending time for defts to answer com plaint to 6-2-71.	7	
6-7-71	ANSWER of deft to AMENDED COMPLAINT FILED.	8	
6/9/71	Deft's Jury Demand Filed.	9	
12-17-71	Pltff's notice to take the deposition of Byrnes & Baker by Keith Baker and Gordon Hawthorne on 12-29-71 filed.	10	
12-27-71	By ROSLING, J.- Order on stip filed adjd deposition of Byrnes & Baker to 1-26-72.	11	
12-30-71	Pltff's notice to take the deposition of Byrnes & Baker by Keith Baker, Gordon Hawthorne etc. on 1-26-72 filed.	12	
6-1-72	Deft's interrogatories (set No.1) to pltff filed.	13	
7-13-72	Pltff's answers to interrogatories by deft (set No.1) filed.	14	
2/16/73	Before Rosling, J.-Case called -Assignment for trial adj'd to 2/23/73		
2/23/73	Before Rosling, J.-Case called-No appearances for pltff or deft-Court stated to clerk that case had been reassigned to J.Neaher		
8-22-73	By NEAHER, J - Order dtd 8-22-73 that pre-trial discovery be concluded 9-30-73 filed.	15	
9-10-73	Interrogatories of Deft. Louis J. Bollo filed.	16	
9-13-73	Before NEAHER, J.--Case called. Pre trial conference adjd to 1-7-74 at 9:30 am. Set down for trial 2-4-74 at 10 am.		
10-17-73	Pltff's interrogatories to deft filed.	17	
10-23-73	Pltff's answers to interrogatories filed.	18	
12-11-73	Deft's answers to pltff's interrogatories filed.	19	
1-7-74	Before NEAHER, J. -Case called. Pre trial adjd to 1-10-74. Trial set for 1-21-74.		
4/11/74	Before NEAHER, J.- Case called- Adjd for trial to 6/3/74		
5/24/74	Before NEAHER, J.- Case called- Adjd to 6/3/74		
6-6-74	Notice of motion for an order precluding pltff from calling		

DATE	FILINGS--PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	A REP EMC RE
	William Carolla as an expprt witness filed		20	
9-9-74	Affidavit of Louis Bollo filed Floyd Abrams filed.		21	
9/11/74	By NEAHER,J.- Order dated Sept. 9, 1974 filed that the deft's motion is granted only to the extend of adjding the trial until Sept. 30, 1974 (on back of Doc. #20)		20	
9/11/74	Supplemental Answer to Interrogatories filed.		22	
9/11/74	Supplemental Answers to Interrogatories filed.		23	
9/27/74	By NEAHER,J.- Order dated Sept. 27, 1974 filed that the demand for trial by jury in this action be withdrawn		24	
10-1-74	Notice to take deposition of Carleton Holstrom filed.		25	
10-16-74	Before NEAHER, J. - Case called. Answered ready. Trial begun. Trial to resume on 10-17-74 at 10 A.M.			
10/17/74	Before NEAHER,J.- Case called-Trial resumed-Trial to resume on Oct. 18, 1974			
10/18/74	Before NEAHER,J.- Case called- Trial resumes-Trial to resume on Oct. 21, 1974			
10/21/74	Before NEAHER,J.- Case called- Trial resumes-Deft rests--All sides rest-An application was made by P. Williams to amend his complaint to read from $2,400,000.00 to $3,100,000.00-Court reserved decision-Trial concluded-Court reserved decision.			
10/22/74	Stenographers transcripts of Oct. 16,17,18 & 21, 1974 filed			26-
11-29-74	By NEAHER, J.-Ordered that the attached five pages of deft's exhibit O for identification shall be received in evidence filed.			30
12/27/74	Deft's Post Trial Reply Brief filed.			31
12-31-74	Post-trial Reply memorandum of pltff Pittsburgh Coke filed.			3
10-18-76	By NEHAER,J.- Memo of decision that judgment is directed in favof of deft Louis J. Bollo dismissing the complaint filed.			33
10-19-76	Judgment that the pltff take nothing of the deft and that judgmen entered in favor of the deft, Louis J. Bollo, and the complaint is dismissed filed.			
10-27-76	Notice of entry filed.			35
11-16-76	Notice of appeal filed. Copy to C of A and to deft.			36
11-17-76	Undertaking for costs on appeal filed.			37
12-2-76	Letter dtd 11-25-76 to J. Neaher from Floyd Abrams re transcript corrections filed.(Complete listing attached)			38

D. C. 110

FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
5 Notice to depose pltff filed.			39
6 Copy of letter dtd 12-6-74 to J. Neaher from Anthony M. Radice re lists of corrections to transcript of trial filed.			40
6 Above record certified with exhibits and mailed to the C of A. ---cg			
76 Acknowledgement received from C of A for record on appeal.			41

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PITTSBURGH COKE & CHEMICAL COMPANY,
Plaintiff,

-against-

LOUIS J. BOLLO,
Defendant.

AMENDED COMPLAINT

Civ. No. 71C305

Plaintiffs Pittsburgh Coke & Chemical Company, by its attorneys, Cahill, Gordon, Sonnett, Reindel & Ohl, for its complaint against defendant Louis J. Bollo, alleges:

AS AND FOR A FIRST CAUSE OF ACTION

1. Plaintiff Pittsburgh Coke & Chemical Company ("Pittsburgh Coke") is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in Pittsburgh, Pennsylvania. On or about February 19, 1971, First Grant Corporation ("First Grant"), a Delaware corporation, merged into Pittsburgh Coke and Pittsburgh Coke is the surviving corporation of the merger with all rights of First Grant of relevance to this action.

2. Defendant Louis J. Bollo ("Bollo") is a citizen of the State of New York and a resident of Nassau County, New York. At all times of relevance to this litigation up to and including September 18, 1969, Bollo was the chief stockholder, president and dominating and controlling figure with respect to the practices and policies of Standard Aircraft Equipment Company, Inc. ("Standard"), a New York corporation.

3. The amount in controversy, exclusive of interest and costs, exceeds the sum of ten thousand ($10,000) dollars.

4. This action arises, inter alia, under section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder, and under section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

5. Jurisdiction is conferred in this Court by section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa, by section 22 of the Securities Act of 1933, 15 U.S.C. § 77v, by 28 U.S.C. § 1331(a) and by § 28 U.S.C. § 1332(a).

6. On or about December 20, 1968, a written agreement (hereinafter the "Agreement"), a copy of which is annexed hereto as Exhibit A, was executed between First Grant and Bollo pursuant to which Bollo agreed to sell to First Grant so many of his shares of common stock of Standard as might be required, after the solicitation by First Grant by tender offer to the other shareholders, to make First Grant the owner of 80% of the common stock of Standard.

7. Pursuant to paragraph 1 of the Agreement, First Grant agreed to purchase those shares of Standard from Bollo at a price of $16 per share.

8. In paragraph 2(e) of the Agreement, Bollo warranted and represented that there had been furnished to First Grant financial statements of Standard, consisting of balance sheets as of December 31, 1965, December 31, 1966 and December 31, 1967, and income statements and related notes for the years

ended December 31, 1965, December 31, 1966 and December 31, 1967, accompanied in each instance by the opinion of Byrnes & Baker, Certified Public Accountants, and a balance sheet as of September 30, 1968 and an income statement for the nine-month period then ended, prepared from the books and records of Standard without audit.

9. In paragraph 2(e) of the Agreement, Bollo further warranted and represented, inter alia, that, except as otherwise specifically set forth in said statements or in the accompanying accountants' certificates, all such financial statements had been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the period involved and that all such statements fairly presented the financial position of Standard as of the dates thereof and the results of operations for the periods indicated.

10. In paragraph 2(f) of the Agreement, Bollo further warranted and represented that since December 31, 1967, there had been no material adverse change in the financial condition or in the business or operations of Standard.

11. In a letter to First Grant by Bollo dated September 18, 1969 (a copy of which is annexed hereto as Exhibit B), and submitted by Bollo at the closing with respect to the purchase by First Grant of common stock of Standard as provided for in the Agreement (hereinafter the "Closing"), Bollo again warranted and represented that there had been furnished to First Grant financial statements of Standard, consisting of balance sheets as of December 31, 1965, December 31, 1966,

and December 31, 1967, and income statements and related notes for the years ending December 31, 1965, December 31, 1966 and December 31, 1967, accompanied in each instance by the opinion of Byrnes & Baker, Certified Public Accountants, and a balance sheet as of September 30, 1968, and an income statement for the nine-month period then ended, prepared from the books and records of Standard without audit.

12. In paragraph 1(e) of the September 18, 1969 letter, Bollo further warranted and represented that except as otherwise specifically set forth in said statements or in the accompanying accountants' certificate, all such financial statements had been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved and that all such statements fairly presented the financial position of Standard as of the dates thereof and the results of operations for the periods indicated.

13. In paragraph 1(f) of the letter of September 18, 1969, Bollo warranted and represented that since December 31, 1967, there had been no material adverse change in the financial condition of Standard as evidenced by most recent balance sheet information with the exception of a reduction in the 1969 earnings due primarily to the investment of start-up expenses of Standard's Kansas City operation.

14. Pursuant to paragraph 1 of the Agreement, First Grant purchased from Bollo 171,302 of the common shares of Standard at $16 per share, paying to Bollo the sum of $2,740,832 for said common shares at the Closing held on September 19, 1969.

15. Pursuant to paragraph 4 of the Agreement, on or about December 31, 1968, First Grant offered to purchase from the other holders of common stock of Standard shares of such stock at the price of $16 per share.

16. First Grant purchased from the other holders of common stock of Standard 71,309 shares of common stock of Standard at $16 per share pursuant to the above tender offer and paid the total of $1,140,944 for said stock.

17. Paragraph 11 of the Agreement provided that upon 15 days' written notice given by Bollo, First Grant would purchase all of Bollo's then remaining shares of Standard's common stock at the price per share, with appropriate adjustments for any stock splits or similar changes in the capital structure of whichever is the greater of $12 per share or 15 times the average earnings per common share of Standard during the preceding three calendar years.

18. By letter dated July 17, 1970, Bollo tendered 79,042 shares of Standard common stock to First Grant at $12 per share, for which Bollo was subsequently paid the total of $948,504 by First Grant.

19. The purchases by First Grant from Bollo for $3,689,336 of the aforesaid 250,344 common shares of Standard and by First Grant from other stockholders of Standard for $1,140,944 of the aforesaid 71,309 common shares of Standard were based upon First Grant's reliance upon information supplied to it by Bollo relating to Standard's past and projected future business operations and representations and warranties to it by

Bollo with respect thereto. Bollo furnished to First Grant, inter alia, balance sheets of Standard as of December 31, 1965, December 31, 1966, and December 31, 1967, and income statements and related notes for the years ending December 31, 1965, December 31, 1966 and December 31, 1967, accompanied in each instance by the opinion of Byrnes & Baker, Certified Public Accountants, and a balance sheet as of September 30, 1968, and an income statement for the nine-month period then ended prepared from the books and records of Standard without audit. Bollo made warranties and representations with respect thereto in the Agreement and in his letter of September 18, 1969. Bollo furnished other information to First Grant with respect to Standard and made other warranties and representations, both in writing and orally, with respect thereto.

20. Significant portions of the information furnished by Bollo to First Grant with respect to Standard and warranties and representations with respect thereto were prepared and furnished fraudulently, recklessly and negligently; contained untrue statements of material facts; failed to disclose facts which Bollo knew or should have known were material to the financial condition and business prospects of Standard and failed to state material facts necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading. The balance sheets, income statements and related notes were not prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved. Such statements did not fairly present the financial position of Standard as of the dates thereof and the results of

operations for the periods indicated. Among other things, said balance sheets, income statements and related notes:

(a) grossly overvalued the inventories of Standard, a substantial portion of which were, as Bollo knew or should have known, obsolete as of each of the time periods referred to;

(b) grossly overvalued the inventories of Standard, a substantial portion of which, as Bollo knew or should have known, were in excess of Standard's reasonable need for the future as of each of the time periods referred to;

(c) improperly failed to reveal and concealed the fact, which Bollo knew or should have known, that Standard was a self-insurer and was not paying the insurance premiums adequate to protect against ordinary and recognized risks incurred by a company engaged in a business such as Standard.

21. On information and belief, Bollo's warranties and representations in the Agreement that between December 31, 1967 and December 20, 1968, there had been no material adverse change in the condition of Standard, and Bollo's warranties and

representations in his letter of September 18, 1969 that between December 31, 1967 and September 18, 1969 there had been no material adverse change in the condition of Standard were, as Bollo knew or should have known, untrue and failed to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Bollo improperly failed to reveal and concealed the fact, among others, that relationships with major suppliers of Standard had materially changed and, as a result, Standard's business prospects had materially worsened.

22. As a result of the wrongful acts of Bollo as aforesaid, First Grant offered to pay, and did pay, for the common stock of Standard referred to hereinabove sums far in excess of the actual value of said stock.

23. In furtherance of the course of conduct hereinabove described, Bollo used and caused the use of the United States mails and of means and instrumentalities of interstate commerce.

24. Bollo furnished all the information above described and provided the warranties and representations above described with the intent that they be relied upon; First Grant was ignorant of the falsity thereof and believed them to be true; and, as intended and foreseen by Bollo, First Grant relied thereon in connection with its purchase of securities as aforesaid.

25. The wrongful acts by Bollo as aforesaid violated § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.10b-5 promulgated thereunder, and of § 17(a) of the Securities Act of 1933, 15 U.S.C. § 17q(a).

26. By reason of the foregoing, Pittsburgh Coke has been damaged in a sum not presently capable of being precisely ascertained, but believed to be no less than $2,400,000.

AS AND FOR A SECOND CAUSE OF ACTION

27. Pittsburgh Coke repeats and realleges the allegations of paragraphs 1 through 24 of the complaint as though fully and separately set forth herein.

28. First Grant complied with all the terms of the agreement and fulfilled all its obligations thereunder.

29. The acts of Bollo, as aforesaid, constitute material breaches by him of the Agreement and his letter of September 18, 1969. As a result, Pittsburgh Coke has been damaged in a sum not presently capable of being precisely ascertained, but believed to be not less than $2,400,000.

AS AND FOR A THIRD CAUSE OF ACTION

30. Pittsburgh Coke repeats and realleges the allegations of paragraphs 1 through 24 of the complaint as though fully and separately set forth herein.

31. The acts of Bollo as aforesaid were, on information and belief, knowingly performed with an intent to deceive and constituted a fraud and deceit upon First Grant. As a result, Pittsburgh Coke has been damaged in a sum not presently capable of being precisely ascertained, but believed to be no less than $2,400,000.

WHEREFORE, judgment is demanded by plaintiff Pittsburgh Coke & Chemical Company against defendant Louis J. Bollo in the aggregate sum of $2,400,000, together with the costs and disbursements of this action.

Pittsburgh Coke & Chemical Company further demands judgment against defendant Bollo for punitive damages in a sum not less than the costs and expenses of this action, including the fees and disbursements of plaintiff's attorneys and accountants.

Dated: New York, New York
April 7, 1971

CAHILL, GORDON, SONNETT, REINDEL & OHL

By _____
A Member of the Firm
Attorneys for Plaintiff
Office and P. O. Address:
80 Pine Street
New York, New York 10005
(212) 944-7400

EXHIBIT C

AGREEMENT

THIS AGREEMENT made this 20th day of December, 1968, by and between

LOUIS J. BOLLO, an individual (hereinafter sometimes called "Bollo"),

A
N
D

FIRST GRANT CORPORATION, a Delaware corporation (hereinafter called "Purchaser").

WITNESSETH:

WHEREAS, Purchaser presently owns 112,349 shares of common stock of Standard Aircraft Equipment Company, Inc., a New York corporation (hereinafter called "Standard") and Purchaser desires to become the owner of not less than 80% of the issued and outstanding common stock of Standard; and

WHEREAS, Bollo owns 248,403 shares of Standard common stock and is willing to sell to Purchaser such portion of his Standard common stock as may be required, after Purchaser's solicitation of tenders by others, to make Purchaser the owner of 80% of such stock;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and of the sum of One Dollar ($1.00) paid by each party to the other, the parties hereto covenant and agree as follows:

20a

EXHIBIT A

1. On the Closing Date as hereinafter defined, Bollo will sell to Purchaser and Purchaser will purchase from Bollo so many of Bollo's shares of the common stock ($0.50 par) of Standard at the price of $16.00 per share as may be required to be added to the 112,349 shares now owned by Purchaser and the shares by then acquired by Purchaser pursuant to the offer provided by Paragraph 4 below, to make Purchaser the owner of 80% of the issued and outstanding common stock of Standard. Such number of common shares to be purchased from, and sold by, Bollo is hereinafter called the "Balance of 80% of Standard Stock."

2. Bollo hereby warrants and represents as follows:

(a) The shares of common stock of Standard to be sold by Bollo to Purchaser hereunder are validly issued and outstanding shares of the common stock of Standard; that Bollo owns said shares free and clear of all claims and encumbrances; and that Bollo has the full power and authority to transfer such shares to Purchaser as herein provided, free and clear of all claims and encumbrances.

(b) Standard and each of its subsidiaries is duly organized and validly existing as a corporation in good standing under the laws of its state of incorporation and has the power and authority to own and lease its properties and to conduct its business as now being conducted, and is duly qualified to do business as a foreign corporation and is in good

2(b)

Exhibit A

standing in each other jurisdiction in which its ownership of properties or business activities require such qualification, except in those states where the failure to become so qualified would not have a material adverse effect on Standard.

(c) The authorized capital stock of Standard consists of 500,000 shares of common stock, $0.50 par value, of which 443,700 shares are issued and outstanding.

(d) Standard has granted no right, option or privilege to purchase any shares of its common stock and has outstanding no security which is convertible into shares of common stock.

(e) There have been furnished to Purchaser financial statements of Standard, consisting of balance sheets as of December 31, 1965, December 31, 1966, and December 31, 1967, and income statements and related notes for the years ending December 31, 1965, December 31, 1966, and December 31, 1967, accompanied in each instance by the opinion of Byrnes & Baker, Certified Public Accountants, and a balance sheet as of September 30, 1968 and an income statement for the nine-month period then ended, prepared from the books and records of Standard without audit. Except as otherwise specifically set forth in said statements or in the accompanying accountants' certificates, all such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved. All such

statements fairly present the financial position of Standard as of the dates thereof and the results of operations for the periods indicated.

(f) Since December 31, 1967, there has been no material adverse change in the financial condition or in the business or operations of Standard.

(g) Standard has no employment contracts (excluding contracts with Unions) or commitments and has no employee benefits, plans or arrangements other than group life insurance, hospitalization and pension plans under which all employees are covered except Standard's annual bonus to all employees of one week's salary given at the option of management.

(h) There are no material actions, suits or proceedings pending or, to the knowledge of Bollo, threatened against Standard, (except a threatened action by Merchandising Dynamics, Inc.) and Standard is not in default with respect to any judgment, writ, injunction or other order of any court or governmental agency.

(i) The execution of this Agreement and the sale by Bollo of his common stock of Standard to Purchaser as contemplated hereunder will not result in the breach of any term or provision or constitute a default hereunder in any agreement to which Bollo is a party.

3. Purchaser hereby represents that the shares of common stock of

Standard being purchased by it from Bollo hereunder are being acquired by it for investment and not for the purpose of or with a view to the distribution or resale thereof. Purchaser acknowledges that such shares have not been registered under the Securities Act of 1933 and that Bollo is relying upon the Purchaser's representation in claiming an exemption from the registration requirements of said Act.

4. Purchaser shall make an offer for a period of at least thirty (30) days to all the common stockholders of Standard other than Bollo to purchase their common stock in Standard at the same price of $16.00 per share to be paid to Bollo hereunder. The form and details of the proposed offer to such other stockholders are set forth in Exhibit A hereto, subject to change by counsel for the parties, and such offer shall be made as promptly as is feasible after the final form of Exhibit A has been approved in writing by W. Gordon Rauck and Paul L. Bollo, but in any event shall commence by FEBRUARY 1, 1969.

5. The closing on the sale and purchase of the Balance of 80% of Standard Stock shall take place at the offices of Chemical Bank New York Trust Company at 11:00 o'clock a.m., Eastern Standard Time, on a date five (5) business days after the date of receipt by Purchaser of a copy of the later of the exemptions or approvals described in subparagraphs 6(a) and 6(b) below, but in no event sooner than February 1, 1969 (said date of sale and purchase being referred to herein as the "Closing Date") nor later than JUNE 30, 1969. On the Closing Date:

(a) Bollo will deliver to Purchaser a certificate or certificates for the number of shares comprising the Balance of 80% of Standard Stock, all of said certificates being duly endorsed for transfer or with duly executed stock powers attached thereto, provided, however, that in the event any shares of Standard stock shall have been tendered at or before January 31, 1969 pursuant to the offer described in Paragraph 4 or Exhibit A hereto but shall not have been counted in determining the Balance of 80% of Standard Stock being sold by Bollo at the Closing Date because such tenders were still subject to approval by the Securities and Exchange Commission under Section 17 of the Investment Company Act of 1940, Purchaser shall immediately after acquiring any of such shares through the delayed purchases from such affiliates offer to sell such excess over 80% to Bollo during a period of fifteen (15) days at the same price as paid therefor by Purchaser.

(b) Purchaser shall deliver to Bollo a certified or cashier's check of Chemical Bank New York Trust Company in the amount of the number of shares comprising the Balance of 80% of Standard Stock times $16.00.

6. The obligation of Purchaser to purchase the Balance of 80% of Standard Stock is subject to fulfillment of each of the following conditions:

(a) Pittsburgh Coke & Chemical Company, the majority stockholder of Purchaser, being an investment company registered under the Investment

Company Act of 1940, Purchaser or Pittsburgh Coke & Chemical Company shall have obtained an exemption from the Securities and Exchange Commission under Section 17 of that Act to permit consummation of the purchase contemplated hereby.

(b) The Civil Aeronautics Board shall have exempted or approved the increase by Purchaser of its holdings to 80% of the common stock of Standard, without any condition beyond limiting dealings of Standard with other subsidiaries of Purchaser.

(c) Bollo shall have furnished to Purchaser an opinion of his counsel, Paul L. Bollo, Esquire, dated the Closing Date, that:

(i) Standard and each of its subsidiaries is duly organized and validly existing as a corporation in good standing under the laws of its state of incorporation and has the power and authority to own and lease its properties and to conduct its business as now being conducted, and is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which its ownership of properties or business activities requires such qualification, except in those states where the failure to become so qualified would not have a material adverse effect on Standard;

(ii) the shares of common stock of Standard comprising the Balance of 80% of Standard Stock are all validly issued, fully paid and nonassessable shares of the common stock of Standard and are

being transferred at the closing by Bollo to Purchaser free and clear of all claims and encumbrances; and

(iii) to the knowledge of such counsel, there are no material actions, suits or proceedings pending or threatened against Standard, (except a threatened action by Merchandising Dynamics, Inc.), and Standard is not in default with respect to any judgment, writ, injunction or other order of any court or governmental agency.

(d) The representations and warranties contained in Paragraph 2 of this Agreement shall be true and correct as of the Closing Date, with the same force and effect as though they had been made at the Closing Date, and there shall have been delivered to Purchaser the certificate of Bollo, President of Standard, dated the Closing Date to such effect, and that since September 30, 1968 Standard has not increased any salaries except as described in Bollo's letter of December 18, 1968, to Mr. R. M. Johnston, or paid any dividends on its stock, and that its experience in product warranty liabilities does not differ from that described in said letter of December 18, 1968.

7. Bollo shall use his best efforts in assisting Purchaser or Pittsburgh Coke & Chemical Company to obtain the exemption by the Securities and Exchange Commission described in Paragraph 6(a) above, but the obligations of Bollo to

consummate any of the other transactions contemplated hereby are subject to fulfillment of each of the following conditions:

(a) Purchaser shall have made the offer described in Paragraph 4 above to purchase the shares of all other stockholders of Standard at the same price of $16.00 per share (but without requiring transfer stamps).

(b) Purchaser shall have furnished to Bollo an opinion of its counsel, Thorp, Reed & Armstrong, dated the Closing Date, that:

(i) all necessary corporate action has been taken by Purchaser to approve the execution of this Agreement and the consummation of the purchase of the shares of common stock of Standard from Bollo; and

(ii) the execution of this Agreement and the consummation of the purchase from Bollo of his shares of stock of Standard will not result in a breach of any term or provision of, or constitute a default under, any agreement to which Purchaser is a party or with respect to any judgment, writ, injunction or other order of any court or governmental agency against Purchaser provided there has been obtained the exemption from the Investment Company Act described in Paragraph 6(a) above and Purchaser has complied with Paragraph 6(b) above.

8. Each of the parties hereto covenants and represents that no agreement has been made for, or no action has been taken which would give rise to, a valid claim against any of the parties hereto for the payment to any person of, a brokerage commission, finder's fee, or other like payment in connection with the Agreement and the transactions contemplated hereby, except Purchaser has agreed to pay a brokerage commission to Clark, Dodge & Co., Inc.

9. All representations of Bollo contained in Paragraph 2 hereof shall survive the closing. Bollo covenants and agrees to indemnify and hold Purchaser harmless from any and all loss or damage incurred by Purchaser by reason of the breach of any of the representations and warranties set forth in Paragraph 2 hereof, provided (1) that Purchaser shall have given Bollo written notice of such breach of Paragraph 2 within three (3) years from the Closing Date, and (2) that Bollo shall be afforded an opportunity to defend in the name of Standard, but at Bollo's expense and by counsel of his choosing, any claim on account of which Purchaser may assert liability hereunder.

10. As promptly as is feasible after the closing, Purchaser shall cause Standard to enter into an employment contract with Bollo in the form attached hereto as Exhibit B, and Bollo agrees to enter into such contract.

11. Upon fifteen (15) days' written notice given by Bollo at any time while he is not in default under such employment contract, Purchaser will purchase

all, but not less than all, of Bollo's then remaining shares of Standard's common stock at the price per share, with appropriate adjustments for any stock splits or similar changes in the capital structure, of whichever is the greater of Twelve ($12) Dollars or fifteen (15) times the average earnings of Standard per common share during the preceding three (3) calendar years. From and after the closing of this Agreement, Bollo shall not sell or transfer any of his remaining common stock of Standard to any third party without having given Purchaser an opportunity during a period of ten (10) days after delivery of written notice to Purchaser to buy said shares at the same prices and/or terms as are being offered by such third parties. There shall be typewritten on each of the certificates for Bollo's said remaining shares of common stock of Standard the following:

> "Any transfer of the shares represented by this certificate is subject to the terms of an Agreement dated December 20th, 1968 between Louis J. Bollo and First Grant Corporation"

12. This Agreement constitutes the entire agreement between the parties and no amendment or modification thereof shall be effective unless in writing and signed by each of the parties hereto.

13. This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors, heirs and assigns.

14. This Agreement is to be governed and construed according to

the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

WITNESS

LOUIS J. BOLLO

FIRST GRANT CORPORATION

ATTEST:

By
President

Secretary

[Stationery of]

FIRST GRANT CORPORATION

_____, 1969

To the Holders of
Common Stock, $0.50 Par Value, of
Standard Aircraft Equipment Company, Inc.

OFFER TO PURCHASE

First Grant Corporation ("First Grant") hereby offers to purchase at $16.00 per share (without deduction for transfer taxes) such shares of the Common Stock of Standard Aircraft Equipment, Inc. ("Standard") as may be tendered to it during the period ending at the close of business on _____, 1969, subject to certain approvals by government agencies described below.

For your information, it should be noted that First Grant owns 112,349 shares of such stock and has already entered into an agreement with Mr. Louis J. Bollo, President of Standard to purchase at the same price of $16.00 per share such of the shares of Common Stock of Standard as may be required to be added to those purchased under this offer to make First Grant the owner of 80% of the outstanding Common Stock of Standard. First Grant and Mr. Bollo have also agreed that Standard will enter into an employment contract with Mr. Bollo for five years at a salary of $65,000 per year; and as added incentive, First Grant will give Mr. Bollo an option to sell to it the remainder of his stock of Standard at a price increased in accordance with increases in the earnings of Standard.

Exhibit A

For your further information, there are enclosed the balance sheets of Standard at December 31, 1967 and September 30, 1968, and income statements and related notes for the year ending December 31, 1967 and for the nine-month period ended September 30, 1968. The Common Stock of Standard is traded in the over-the-counter market, where from _____ through _____ the stock bid price as quoted by the National Quotation Bureau, Incorporated, ranged between _____ and _____, and on _____, the bid price was _____.

If you wish to tender your shares, you should complete the enclosed blue letter of transmittal and mail it, together with your stock certificates in negotiable form, to Chemical Bank New York Trust Company ("Chemical Bank") in the self-addressed envelope enclosed for your convenience. However, First Grant will obtain approval or exemption by the Civil Aeronautics Board before committing itself to purchasing any of the stock of Standard in addition to its present holdings of 112,349 shares, and all shares should be tendered subject to the obtaining of such approval or exemption. Also, before any officers (including Mr. Bollo), directors or employees of Standard can sell any of their Standard stock to First Grant, an exemption will have to be obtained by it from the Securities and Exchange Commission under the prohibitions against dealing with affiliates in the Investment Company Act of 1940 since First Grant is a subsidiary of Pittsburgh Coke & Chemical Company, a registered investment company. Of course, if you are not an officer, director or employee of Standard, you are not required to obtain such exemption from the Securities and Exchange Commission before selling your stock to First Grant.

Payment for shares tendered by persons other than officers, directors or employees of Standard will be made by Chemical Bank promptly upon receipt by First Grant of the approval or exemption by the Civil Aeronautics Board, and in the case of tenders by officers, directors or employees, such payment will be made by Chemical Bank promptly by receipt also of the approval or exemption of the Securities and Exchange Commission. If First Grant is prevented by rulings of the Civil Aeronautics Board (or of the Securities and Exchange Commission if you are an officer, director or employee of Standard) from consummating the purchase of your shares without penalty, your stock certificates will be returned to you by Chemical Bank immediately after First Grant receives notice of such ruling. If you have not received payment for your shares by [60 days from date of letter], 1969, you may, by letter to Chemical Bank, obtain the immediate return of your stock certificates. Until you have received payment for your shares, you will be entitled to dividends, if any, declared thereon and to exercise your voting rights.

First Grant will pay to Clark, Dodge & Co., Inc. a commission of forty-six cents (46¢) per share for each share tendered hereunder.

Yours very truly,

FIRST GRANT CORPORATION

By_____
President

[Printed on Blue Paper]

TRANSMITTAL LETTER

To Accompany Common Stock of Standard Aircraft Equipment Company, Inc.

Chemical Bank New York Trust Company
30 Broad Street
New York, New York 10015

Dear Sirs:

The undersigned hereby accepts the offer ("Offer"), dated _____, 1969, of First Grant Corporation to purchase shares of Common Stock of Standard Aircraft Equipment Company, Inc., upon the terms set forth therein, and in accordance with the Offer and this Transmittal Letter deposits with you the following certificate(s) for shares of Common Stock of Standard Aircraft Equipment Company, Inc.:

Certificate Number	Number of Shares	Registered in the Name of

You are authorized and instructed to deliver the above described certificate(s), together with all accompanying evidences of transfer and authority if any, to First Grant Corporation upon your mailing to the undersigned the purchase price therefor of $_____ per share.

Please have the check for the purchase price, to the order of the undersigned, mailed to the address set forth following the name of the undersigned (or the person and address designated in "Special Payment Instructions" if such is completed).

If the shares represented by the enclosed certificates are not purchased by First Grant Corporation (by reason of lack of governmental clearance to First Grant Corporation), then the certificates should be returned to the undersigned at the address following the name of the undersigned (or to the person and address designated in "Special Payment Instructions" if such is completed).

SPECIAL PAYMENT INSTRUCTIONS
To be completed ONLY if proceeds are to be paid to other than the undersigned. Mail to:

Name _____
Please Print

Address _____

_____
Give Zip Code

THE CERTIFICATE(S) HAVE BEEN ENDORSED BY THE REGISTERED OWNER EXACTLY AS DRAWN AND THE SIGNATURE HAS BEEN GUARANTEED
(SEE INSTRUCTIONS ON REVERSE)

Dated: _____, 19__

_____
(Signature(s) of owner(s))
(Must be signed by registered holder(s) or by person(s) authorized to become registered holder(s) by certificates and endorsements transmitted)

Name _____
(Please Print)

Address _____

_____
(Give Zip Code)

Telephone No. _____
(Area Code)

IMPORTANT

PLEASE COMPLETE, SIGN AND TRANSMIT THIS TRANSMITTAL LETTER TO CHEMICAL BANK NEW YORK TRUST COMPANY IN ACCORDANCE WITH THE INSTRUCTIONS SET FORTH ON THE REVERSE SIDE OF THIS PAGE, SO THAT IT WILL BE RECEIVED NOT LATER THAN 5:00 P.M., NEW YORK TIME, JANUARY 6, 1969.

[Reverse Side of Transmittal Letter]

INSTRUCTIONS

1. General

The Letter of Transmittal properly filled in, dated and signed, should accompany stock certificate(s) of Standard Aircraft Equipment Company, Inc. when deposited in accordance with the Offer. Delivery of the Standard Aircraft Equipment Company, Inc. certificate(s) is to be made to Chemical Bank New York Trust Company at its address set forth on the reverse side hereof. If mailed, registered mail is suggested. An addressed envelope is enclosed for use in this connection. Any delivery of certificates of Standard Aircraft Equipment Company, Inc. to Chemical Bank New York Trust Company hereunder is at the option and risk of the owners thereof.

2. Endorsement and Signature Guarantee

The surrendered certificate(s) must be endorsed by the registered owner exactly as his name appears on the certificate(s) and the signature to the endorsement must be guaranteed by a firm having membership on the New York Stock Exchange or on the American Stock Exchange, or by a commercial bank or trust company. If the endorsement on the certificate(s) surrendered for exchange is executed by an attorney-in-fact, executor, administrator, trustee, guardian or other fiduciary, or by an officer of a corporation on behalf of the corporation or by a person acting in any other representative capacity, the person executing the endorsement must give his full title in such capacity and must furnish proper evidence of his appointment and authority to act in such capacity.

EMPLOYMENT AGREEMENT

THIS AGREEMENT made and entered into as of this _____ day of _____, 1969, by and between

STANDARD AIRCRAFT EQUIPMENT COMPANY, INC., a New York corporation (hereinafter called "Standard"),

A
N
D

LOUIS J. BOLLO, an individual (hereinafter called "Bollo").

WITNESSETH:

WHEREAS, First Grant Corporation, a Delaware corporation (hereinafter called "First Grant"), has this day contracted to purchase from Bollo such portion of the issued and outstanding common stock of Standard as may be required to make First Grant the owner of over 80% of such stock; and

WHEREAS, Bollo has been employed by Standard for a number of years as President and Chief Executive Officer, and is presently so employed at a basic salary of $40,000 per year; and

WHEREAS, First Grant, Standard, and Bollo mutually desire to assure the continuance of Bollo's services to Standard until _____, 1974, and to assure his inability to compete with Standard after the end of his services for Standard;

Exhibit B

NOW, THEREFORE, in consideration of the premises and mutual covenants herein set forth, the parties hereto agree as follows:

1. Standard will continue to employ Bollo as its President and Chief Executive Officer at the salary of $65,000 per year until _____, 1974, and Bollo will accept such employment and continue to serve or be available to serve in such capacity until said date in 1974.

2. During his employment hereunder, Bollo shall devote his full time, energy, experience and skill to serving Standard as such President and to performing such services as may be assigned to him from time to time by the Board of Directors or by the Chairman of the Board of Standard.

3. During the period of this Employment Agreement and thereafter for three years, Bollo will not directly nor indirectly as an individual, member of any partnership, or officer, director or employee of any corporation or other entity, engage in any business of the nature and type engaged in by Standard at any place in the continental United States.

4. If Bollo shall become disabled or incapacitated to perform his obligations under Paragraph 2 above for any reason other than death and at any time or from time to time hereafter, Standard will nevertheless continue to pay Bollo during the period of such disability or incapacity his full salary less any payments to Bollo under disability insurance carried by Standard. Whenever Bollo's

disability or incapacity shall aggregate more than a one-year period, Standard may, by written notice to Bollo, immediately terminate all obligations under this Employment Agreement except Bollo's covenant under Paragraph 3 above, provided the three-year period of said surviving covenant not to compete shall begin to run upon the giving of said notice and not at the end of the five-year period of employment contemplated by this Employment Agreement. Disability or incapacity of Bollo to perform his obligations under Paragraph 2 above shall not be construed as a default.

5. This Employment Agreement shall be binding upon and inure to the benefit of the successors and assigns of Standard, but none of the rights of Bollo hereunder shall be assignable except accrued salary on the date of termination of his employment which, in the case of death, will be payable to his executor or administrator.

IN WITNESS WHEREOF, the parties hereto have executed this Employment Agreement as of the day and year first above written.

STANDARD AIRCRAFT EQUIPMENT COMPANY, INC.

Attest:

By _____
President

_____
Secretary

_____
LOUIS J. BOLLO

_____
Witness

STANDARD AIRCRAFT EQUIPMENT COMPANY
INCORPORATED
969 STEWART AVE., GARDEN CITY, NEW YORK 11530
Pioneer Distributors of Aviation's Leading Lines
TELEPHONE 516 PI 7-8787

December 18, 1968

Mr. R. M. Johnston
First Grant Corporation
Grant Building
Pittsburgh, Pennsylvania

Dear Mr. Johnston:

This is to advise that Standard Aircraft Equipment Co., Inc. has not increased any employee salary since September 30, 1968, except for the following:

1. Those employees in Grades I through VI whose review dates fall within this period. Increases in these categories are limited to 5%.

2. 5% increase given to all officers (7 people) as of 10-30-68.

No dividend has been declared or paid during the period September 30, 1968, to date.

Standard's experience in product warranty liability remains the same as it has been for many years and most manufacturers continue to warrant the sale of their products through Standard in the same manner as if Standard were their agent.

Very truly yours,

STANDARD AIRCRAFT EQUIPMENT CO., INC.

Louis J. Bollo

Louis J. Bollo
President

LJB:pac

cc: Paul L. Bollo

EXHIBIT B

September 18, 1969

First Grant Corporation

Reference is made to a certain agreement between Louis J. Bollo and First Grant Corporation dated December 20, 1968.

This is to advise that I warrant and represent the following to be true and correct as of this date.

1. (a) The shares of common stock of Standard to be sold by Bollo to Purchaser hereunder are validly issued and outstanding shares of the common stock of Standard; that Bollo owns said shares free and clear of all claims and encumbrances; and that Bollo has the full power and authority to transfer such shares to Purchaser as herein provided, free and clear of all claims and encumbrances.

(b) Standard and each of its subsidiaries is duly organized and validly existing as a corporation in good standing under the laws of its state of incorporation and has the power and authority to own and lease its properties and to conduct its business as now being conducted, and is duly qualified to do business as a foreign corporation and is in good standing in each other jurisdiction in which its ownership of properties or business activities require such qualification, except in those states where the failure to become so qualified would

not have a material adverse effect on Standard.

(c) The authorized capital stock of Standard consists of 500,000 shares of common stock, $0.50 par value, of which 443,700 shares are issued and outstanding.

(d) Standard has granted no right, option or privilege to purchase any shares of its common stock and has outstanding no security which is convertible into shares of common stock.

(e) There have been furnished to Purchaser financial statements of Standard, consisting of balance sheets as of December 31, 1965, December 31, 1966, and December 31, 1967, and income statements and related notes for the years ending December 31, 1965, December 31, 1966, and December 31, 1967, accompanied in each instance by the opinion of Byrnes & Baker, Certified Public Accountants, and a balance sheet as of September 30, 1968, and an income statement for the nine-month period then ended, prepared from the books and records of Standard without audit. Except as otherwise specifically set forth in said statements or in the accompanying accountants' certificates, all such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved. All such statements fairly present the financial position of Standard as of the dates thereof and the results of operations for the periods indicated.

(f) Since December 31, 1967, there has been no material adverse change in the financial condition of the company as

evidenced by most recent balance sheet information except that, as you know, earnings in 1969 have been reduced due primarily to the investment in start up expenses of our Kansas City operation.

(g) Standard has no employment contracts (excluding contracts with Unions) or commitments and has no employee benefits, plans or arrangements other than group life insurance, hospitalization and pension plans under which all employees are covered except Standard's annual bonus to all employees of one week's salary given at the option of management.

(h) There are no material actions, suits or proceedings pending or, to the knowledge of Bollo, threatened against Standard, (except a threatened action by Merchandising Dynamics, Inc.) and Standard is not in default with respect to any judgment, writ, injunction or other order of any court or government agency.

(i) The execution of this Agreement and the sale by Bollo of his common stock of Standard to Purchaser as contemplated hereunder will not result in the breach of any term or provision or constitute a default hereunder in any agreement to which Bollo is a party.

2. Since September 30, 1968, Standard has not increased any salaries except as described in my letter of December 18, 1968, to Mr. R. M. Johnston and except as covered by the company wage policy. The company has paid no dividends on its stock and its experience in product warranty does not differ from that

described in said letter of December 18, 1958.

STANDARD AIRCRAFT EQUIPMENT CO., INC.

Louis J. Bollo
President

46

Docket	6/2/71	BF
Diary	not entered	
In ANSWER TO AMENDED COMPLAINT	6/4/71	BF

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PITTSBURGH COKE & CHEMICAL COMPANY,
Plaintiff,
-against-
LOUIS J. BOLLO,
Defendant.

Civ. No. 71C305

Defendant Louis J. Bollo, by his attorneys, Paul, Weiss, Goldberg, Rifkind, Wharton & Garrison, for his answer to the amended complaint:

FIRST DEFENSE

A. First Cause of Action

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the amended complaint.

2. Denies the allegations in paragraph 2 of the amended complaint, except admits that defendant Bollo is a New York citizen, a resident of Nassau County and was, up to and including September 18, 1969, the chief stockholder and president of Standard Aircraft Equipment Company, Inc. ("Standard"), a New York corporation.

3. Denies the allegations in paragraphs 3, 4 and 5 of the amended complaint, except admits that the amount

plaintiff seeks to recover exceeds $10,000, exclusive of interest and costs, and that plaintiff purports to ground jurisdiction in this Court on the provisions of law cited in paragraph 5 of the amended complaint.

4. Denies the allegations in paragraphs 6, 7, 8, 9, 10 and 17 of the amended complaint, except admits that Exhibit A to the amended complaint is a copy of an agreement, dated December 20, 1968 between defendant Bollo and First Grant Corporation (the "Agreement"), and refers to the Agreement for the precise terms and conditions thereof.

5. Denies the allegations in paragraphs 11, 12 and 13 of the amended complaint, except admits that Exhibit B to the amended complaint is a copy of a letter dated September 18, 1969 from defendant Bollo to First Grant Corporation, and refers to said letter for the precise terms and conditions thereof.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 15 and 16 of the amended complaint.

7. With respect to the allegations in paragraph 19 of the amended complaint:

(a) denies knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 19;

(b) admits that defendant Bollo furnished First Grant Corporation with the financial statements referred in the second sentence of paragraph 19;

(c) denies the allegations in the balance of paragraph 19, except admits that defendant Bollo furnished First Grant Corporation with whatever information concerning the affairs of Standard it requested and refers to the Agreement and the letter dated September 18, 1969 for the precise terms and conditions thereof.

8. Denies the allegations in paragraphs 20, 21, 22, 23, 24, 25 and 26 of the amended complaint.

B. Second Cause of Action

9. With respect to the allegations in paragraph 27 of the amended complaint, defendant Bollo realleges paragraphs 1 through 8 of this answer.

10. Denies the allegations in paragraphs 28 and 29 of the amended complaint.

C. Third Cause of Action

11. With respect to the allegations in paragraph 30 of the amended complaint, defendant Bollo realleges paragraphs 1 through 8 of this answer.

12. Denies the allegations contained in paragraph 31 of the amended complaint.

SECOND DEFENSE

13. The amended complaint fails to state claims upon which relief can be granted.

THIRD DEFENSE

14. Plaintiff, by its conduct, has waived the alleged

fraud asserted in the amended complaint.

WHEREFORE, defendant demands judgment dismissing the complaint, together with the costs and disbursements of the action.

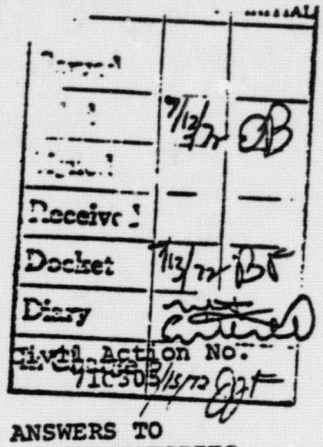
Dated: New York, New York
June 2, 1971

PAUL, WEISS, GOLDBERG, RIFKIND,
WHARTON & GARRISON

By _____
A member of said firm

Attorneys for Defendant
345 Park Avenue
New York, New York 10022
935-8000

50



UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

PITTSBURGH COKE & CHEMICAL COMPANY,

Plaintiff,

-against-

LOUIS J. BOLLO,

Defendant.

ANSWERS TO INTERROGATORIES SET NO. 1

Plaintiff makes the following answers to defendant's interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure.

1. State whether each of the following persons was an employee of plaintiff at any time from January, 1967 to date:

(a) Putnam McDowell;

(b) John Adams;

(c) James Stoll;

(d) Richard M. Johnston;

(e) Fred Kirby;

(f) Rod Bonar;

(g) E.T. Binger.

Yes:

2. For each of the persons for whom the answer to Interrogatory No. 1 is "Yes," state:

(a) Whether such person is, as of the date of your answers to these interrogatories, an

employee of plaintiff, and if so:

(i) the company which presently employs such person; and

(ii) the position or office presently held by such person.

Putnam McDowell, as of June 29, 1972, was employed by Pittsburgh Coke & Chemical Company ("PCC") as Vice President and Director.

John Adams, as of June 29, 1972, was employed by PCC as Vice President and Director.

James Stoll, as of June 29, 1972, was employed by PCC as Controller.

All others, as of July 5, 1972, are not presently employed by PCC.

3. If any of the persons for which the answer to Interrogatory No. 1 is "Yes" is no longer employed by plaintiff, state:

(a) The date on which such person's employment with plaintiff terminated;

(b) The company which employed such person immediately prior to the termination of his employment with plaintiff;

(c) The position or office held by such person immediately prior to the termination of his employment with plaintiff;

(d) The present place of employment of such person, or, if such place is not known to you, state his last known address.

Richard M. Johnston was employed as Assistant to the President of PCC until May 31, 1970. He is presently employed by The Hillman Company, 1900 Grant Building, Pittsburgh, Pa. 15219.

Fred Kirby was employed as Assistant for Planning and Control by PCC until December 31, 1971. He is presently employed as Assistant for Planning and Control by The Hillman Company, 1900 Grant Building, Pittsburgh, Pa. 15219.

Rodney L. Bonar was employed as Assistant for Planning and Control by PCC until September 30, 1970. He was employed as a consultant for an affiliated company for several days during October and November of 1970. He is presently self-employed and resides at 1229 Montclair Drive, Upper St. Clair, Pa. 15241.

E.T. Binger was employed as President of First Grant Corporation until January 31, 1969. His last known address is 2401 Meeting Street, Wayzata, Minnesota 55391.

4. Name each employee of plaintiff who visited the offices or facilities of Standard Aircraft Equipment Co., Inc. ("Standard") between January 1, 1967 and September 18, 1969, and state:

(a) The date or dates of such visit or visits;

(b) The duration of such visit or visits;

(c) The purpose of such visit or visits;

(d) The person or persons at Standard with whom such employee or employees conferred.

The present information of plaintiff with respect to the information sought by the interrogatory, is as follows:

P. B. McDowell

March 19, 1969 - 1/2 day to acquaint him with Standard and its subsidiaries. He met Louis Bollo, Peter Bollo, Herb Dede and, possibly, others.

May 9, 1969 - 1 day visit to attend the annual meeting of Standard and conduct a general review of Standard's operations. He met those present at the annual meeting, and possibly, others.

September 18, 1969 - 1/2 day visit to attend the closing of the sale and the organizational meeting of the Board of Directors. He met those in attendance at these meetings and, possibly, others.

W. G. Rauck

September 18, 1969 - 1/2 day visit to attend the closing of the sale and the organizational meeting of the Board of Directors. He met those in attendance at these meetings and, possibly, others.

G. Housley

June 19, 1969 - 3/4 day visit to meet the accounting personnel and to get a rough picture of the accounting system. He talked to J. Garvey, Jerry Bollo and, possibly, others.

September 16-17, 1969 - 2 day visit to take a

closer look at the Standard accounting system. He met with the accounting personnel, and possibly, others.

R. Bonar

July 16, 1969 - 1 day visit to investigate and analyze Standard. He talked to Louis Bollo, J.E. Rushia, S. Fronckwicz and, possibly, others.

September 10, 1969 - 1/2 day visit to review preliminary sales and earnings forecasts. He spoke to Louis Bollo, J.E. Rushia, J. Garvey and, possibly, others.

J.E. Stoll

June 19, 1969 - 3/4 day visit to introduce him to Standard and its operations. He met Louis Bollo, J.E. Rushia, Ed Black, Herb Dede and, possibly, others.

September 14-19, 1969 - visit to get a better idea of the records, reports, organization, procedures and responsibilities of the accounting department.

E.T. Binger

February 19-21, 1968 - The specific purpose of this visit and the identity of the employees conferred with, are presently unknown to plaintiff.

R.M. Johnston

March 28, 1967 - visit to investigate Standard's operations. He met with Louis Bollo, Orin Leach and, possibly, others.

September 6, 1967 - visit to update his investigation of Standard and discuss its progress. He met with Louis

Bollo, Orin Leach and, possibly, others.

March 14, 1968 - visit to update further his investigation of Standard. He met with Louis Bollo, Orin Leach and, possibly, others.

September 25, 1968 - visit to further update his investigation of Standard. He met with Louis Bollo, Orin Leach and, possibly, others. The discussions are summarized in Plaintiff's Exhibit 24 to the deposition of Louis J. Bollo.

5. State whether, prior to September 18, 1969, any employee or employees of plaintiff examined the inventory system of Standard, and state:

(a) The name or names of such employee or employees;

(b) The position or positions held by such employee or employees;

(c) The time or times of any such examination;

(d) Whether any written report or analysis was prepared in connection with any such examination and, if so, state the present location of such report or analysis.

Rod Bonar, then Assistant for Planning and Control, examined the inventory systems on July 16, 1969. He prepared a written report, which is presently in plaintiff's files.

J.E. Stoll, then Assistant Controller of PCC, visited Standard from September 14 through September 19, 1969. He prepared some written notes, which are presently in plaintiff's files.

Other representatives of plaintiff may also have discussed the inventory system of Standard with Louis Bollo, or, possibly, others.

6. State whether plaintiff claims that defendant Louis J. Bollo represented, orally or in writing, to any employee or employees of plaintiff that Standard had an inventory policy which provided that any category of inventory of which no item was sold within the preceding two years would be written off.

Yes.

7. If the answer to Interrogatory No. 6 is "Yes," state:

(a) To whom such representation is alleged to have been made;

(b) The date that it is alleged such representation was made;

(c) The place that it is alleged such representation was made;

(d) If it is alleged that such representation was in writing, and if so, state the form and present location of such written representation.

Such representation was made orally to R. Bonar on July 16, 1969 in the office of Louis J. Bollo. Plaintiff is presently unaware as to others to whom such representations may have been made by defendant or by any individual who may then have been acting for him.

8. State whether plaintiff claims that defendant Louis J. Bollo ever represented, orally or in writing, to any employee or employees of plaintiff that Standard carried product liability insurance.

No.

9. If the answer to Interrogatory No. 8 is "Yes", state:

Not applicable.

10. With respect to the allegations contained in paragraph 21 of plaintiff's amended complaint, state:

(a) The name of each supplier whose relationship with Standard is alleged to have materially worsened between December 31, 1967 and September 18, 1969; and

(b) The date on which plaintiff first discovered that each such relationship had materially worsened.

The following are major suppliers whose relationship with Standard materially worsened between December 31, 1967 and September 18, 1969:

Whittaker Corporation - FGC first discovered the worsening of the relationship at or about the beginning of August, 1970.

Bendix-Navigation & Control -- FGC first learned of the worsening of the relationship in or about September of 1970.

Bendix-Energy Controls -- FGC first learned of the worsening of the relationship in or about September of 1970.

11. State whether, from December 31, 1967 to date, Standard has entered into a contract with any supplier not under contract with Standard immediately prior to December 31, 1967.

Yes.

12. If the answer to Interrogatory No. 11 is "Yes", state:

(a) The name of each such supplier;

(b) The date on which each such contract was executed; and

(c) The annual dollar volume of sales by Standard of each such supplier's products from the date of execution of such contract to the present.

Name of Supplier	Date on which Contract was Executed	Annual Sales 1969 (000)	Annual Sales 1970 (000)	Annual Sales 1971 (000)
Narco	3/69	$556	$670	$764
Purolator	11/70	--	12	56
Scott	9/68	NA	96	153

There are 29 other suppliers, not under contract with Standard immediately prior to December 31, 1967, who have entered into a contract with Standard since that date. None of them do substantial volume through Standard. For years prior to 1971, no separate sales records were kept for those 29 suppliers because of the limited volume.

13. State whether Standard's annual sales of the products of any supplier have increased in volume from September 18, 1969 to date.

Yes.

14. If the answer to Interrogatory No. 13 is "Yes", state:

(a) The name of each such supplier; and

(b) The annual dollar volume of sales of each such supplier's products from September 18, 1969 to date.

Supplier	Annual Sales 1969 (000)	Annual Sales 1970 (000)	Annual Sales 1971 (000)
Energy Controls (Bendix)	$1277	$2234	$421
Electric Power (Bendix)	344	538	155
Fluid Power (Bendix)	36	47	22
Electrodynamics (Bendix)	109	115	--
Filter (Bendix)	13	36	26
Goodyear	790	731	802
Pesco	77	121	119
Electrical Components (Bendix)	466	570	340
Champion	436	450	743
Sonotone	295	330	312

For years prior to 1971, no separate sales records were kept for any but the major suppliers.

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

PITTSBURGH COKE & CHEMICAL COMPANY, Plaintiff, -against- LOUIS J. BOLLO, Defendant.	Civil Action No. 71C305 VERIFICATION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

FLOYD ABRAMS, being duly sworn, deposes and says that he is a member of the firm of Cahill, Gordon, Sonnett, Reindel & Ohl, attorneys for plaintiff herein; that he makes this verification as agent for the plaintiff; that he has been active in the investigation and prosecution of this action for more than a year and is thoroughly familiar with all of the relevant facts known to, and contentions made by, plaintiff; that he has read the foregoing answers to interrogatories; that to his best knowledge, information and belief such answers are true and contain all the information available to the plaintiff corporation which is responsive to the respective interrogatories.

Floyd Abrams

Sworn to before me this
day of July, 1972

61

Signed 10/18 m

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

10/18/73 m
mot entered
10/19 OBE

PITTSBURGH COKE & CHEMICAL COMPANY,

Plaintiff,

-against-

LOUIS J. BOLLO,

Defendant.

Civil Action No. 71C305

ANSWERS TO INTERROGATORIES Set No. 2

Plaintiff makes the following answers to defendant's interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure.

1. State whether you contend that any supplier informed defendant, at any time between December 31, 1967 and September 18, 1969, that it intended to terminate the exclusivity of Standard's territorial distributorship rights for such supplier's products; and if so, identify each such supplier.

Defendant learned, prior to September 18, 1969 that Whittaker Corporation, the single largest supplier of Standard excepting only all the divisions of the Bendix Corporation combined, was planning to terminate distribution through Standard. Plaintiff does not at this time have information as to defendant's knowledge as to the intentions of other suppliers.

2. For each supplier, if any, named in your answer to Interrogatory No. 1, identify:

(a) the nature of the communication (e.g., letter, telephone call, inter-office memorandum or conversation in person) in which such information was conveyed to defendant;

(b) the person or persons who conveyed such information to defendant;

(c) the date of each such communication; and

(d) the place where each such communication occurred (if the communication was by telephone or letter, state the place of its origin).

(a) The information with respect to the Whittaker Corporation was conveyed to defendant in two internal memoranda of Whittaker which defendant received in 1967, as well as in conversations with other personnel of Standard;

(b) The memoranda were forwarded by Fred Bohling, a west coast employee of Standard; conversations concerning the anticipated termination involved a number of Standard employees, including Jerry Bollo, Ernest Rushia and possibly others;

(c) and (d) The memoranda were sent to defendant from California in 1967; the coversations were contemporaneous with and subsequent to receiving these memoranda.

3. State whether you contend that any supplier informed defendant, at any time between December 31, 1967 and September 18, 1969, that it intended to reduce the discount rate theretofore applicable to Standard's purchase of such supplier's products; and if so, identify each such supplier; and

4. For each supplier, if any, named in your answer to Interrogatory No. 2, identify:

(a) the nature of the communication (e.g., letter, telephone call, inter-office memorandum or conversation in person) in which such information was conveyed to defendant;

(b) the person or persons who conveyed such information to defendant;

(c) the date of each such communication; and

(d) the place where each such communication occurred (if the communication was by telephone or letter, state the place of its origin).

The Bendix Navigation and Control Division and the Bendix Energy Controls Division informed defendant that they intended to reduce the discount rate applicable to Standard's purchase of those divisions' products. This information was communicated to defendant in letters introduced as plaintiff's

Exhibits 28 and 29 at the deposition of defendant and reference is made to those Exhibits. In addition, there was a meeting in defendant's office a few days prior to the writing of the letter marked as Exhibit 29. This meeting was testified to on pages 170 et seq. of defendant's deposition. Plaintiff does not at this time have information as to defendant's knowledge as to this subject with respect to other suppliers.

5. Identify each person whom plaintiff will call as an expert witness at trial, and with respect to each such person:

(a) state the subject matter on which he is expected to testify; and

(b) state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

Plaintiff anticipates calling as an expert witness at trial the accounting firm of Price Waterhouse & Co. They will testify on the accounting system of Standard and on accounting principles generally and are expected to testify that, on the basis of information to be testified to at trial and other data, the financial statements of Standard were not prepared in accordance with generally accepted accounting principles and did not fairly present the financial position of Standard.

6. Identify each person whom plaintiff will call as a witness in the trial of this action to prove the allegations of this complaint.

We are not yet able to identify all whom plaintiff will call as witnesses in the trial of this action, but we anticipate calling Jerry Bollo, Rod Bon[illegible] R. M. Johnston, Putnam McDowell and Ernest Rushia.

7. If you have acquired any information supplemental to your responses to Interrogatories Nos. 6 and 7 of defendant's first set of interrogatories, set forth such information in the manner required by Interrogatory No. 7 of defendant's first set of interrogatories.

We have not acquired any supplemental information in response to Interrogatories Nos. 6 and 7 of defendant's first set of interrogatories.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

FLOYD ABRAMS, being duly sworn, deposes and says that he is a member of the Firm of Cahill Gordon & Reindel, attorneys for plaintiff herein; that he makes this verification as agent for the plaintiff; that he has been active in the investigation and prosecution of this action for more than two years and is thoroughly familiar with all of the relevant facts known to, and contentions made by, plaintiff; that he has read the foregoing answers to interrogatories; that to his best knowledge, information and belief such answers are true and contain all the information available to the plaintiff corporation which is responsive to the respective interrogatories.

Floyd Abrams

Sworn to before me this
17th day of October, 1973

Robert R. Cawthra Jr.
Notary Public

ROBERT R. CAWTHRA, JR.
Notary Public, State of New York
No. 31 0505710
Qualified in New York County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

67

PITTSBURGH COKE & CHEMICAL COMPANY,

Plaintiff,

-against-

LOUIS J. BOLLO,

Defendant.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MICHAEL NOORIGIAN, being duly sworn, deposes and says:

1. I am over the age of 18 years and not party to this action.

2. On the 18th day of October, 1973, I served the annexed Answer to Interrogatories, Set No. 2, upon:

Anthony Radice, Esq.
Paul, Weiss, Rifkind, Wharton
& Garrison
345 Park Avenue
New York, New York

by depositing a true and correct copy thereof in the Post Office letter drop regularly maintained by the United States Government at 80 Pine Street, New York, New York 10005, enclosed in a stamped, sealed wrapper and addressed to the above mentioned attorney at the above mentioned address.

Michael Noorigian

Sworn to before me this
18th day of October, 1973

Robert R. Cawthorn

Notary Public

ROBERT R. CAWTHORN
Notary Public, State of New York
No. 31-[illegible]
Qualified in New York County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

68

PITTSBURGH COKE & CHEMICAL COMPANY,

Plaintiff,

-against-

LOUIS J. BOLLO,

Defendant.

Civil Action No. (ERN) 71 C 305

ANSWERS TO PLAINTIFF'S INTERROGATORIES

Defendant Louis J. Bollo, pursuant to Rule 33 of the Federal Rules of Civil Procedure, makes the following answers to Plaintiff's Interrogatories dated September 26, 1973:

1. Identify each person whom defendant will call as an expert witness at trial, and with respect to each such person:

(a) state the subject matter on which he is expected to testify; and

(b) state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

Defendant has not yet decided whether he will call an expert witness at trial. If and when defendant decides to call an expert witness, the information requested in Interrogatory No. 1 will be provided to plaintiff.

2. Identify each person whom defendant will call as a witness in the trial of this action to disprove the allegations of the complaint.

At this time, defendant anticipates calling as witnesses in the trial of this action: Louis J. Bollo, William B. Lewis, Jr., and a representative from Byrnes & Baker,

OFFICE COPY

	DATE	INITIAL
Served by fax	11/30/73	
Filed		
Signed		
Received	11/30/73	BS
Docket	11/30/73	
Diary	sent forward	
In Charge	11/30/73	JF

either Keith Baker or Gordon Hawthorne, or both.

Dated: New York, New York
November 27, 1973

Louis J. Bollo

TO:

CAHILL, GORDON & REINDEL
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LOUIS J. BOLLO, being duly sworn, deposes and says:

That he is the defendant in the within action; that he has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same is true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Louis J. Bollo

Sworn to before me this
20th day of December, 1973.

Helen F. Rhodes
Notary Public

HELEN F. RHODES
NOTARY PUBLIC, State of New York
No. 30-4503294
Qualified in Nassau County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

PITTSBURGH COKE & CHEMICAL COMPANY, Plaintiff,	:	SUPPLEMENTAL ANSWER TO INTERROGATORIES Set No. 2
-against-	:	
LOUIS J. BOLLO, Defendant.	:	Civil Action No. 71C305

Plaintiff makes the following supplemental answer to defendant's interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure.

5. Identify each person whom plaintiff will call as an expert witness at trial, and with respect to each such person:

(a) state the subject matter on which he is expected to testify; and

(b) state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

9/5/74

9/11/74

Plaintiff will call as an expert witness at trial Mr. William L. Carolla. Mr. Carolla, who will testify on the subject of damages, is expected to express an opinion on the valuation of shares of Standard Aircraft Equipment Co., Inc.

as of December 20, 1968 and September 18, 1969. His opinion will be grounded on the audited and unaudited financial statements of Standard Aircraft prior to those dates and upon certain assumptions to be developed in the testimony of other witnesses at the trial. Mr. Carolla is also expected to testify that the system of accounting for inventory in the years prior to September 18, 1969, did not fairly present the financial position of Standard. This testimony will be grounded upon the testimony of other witnesses at the trial and the deposition testimony of defendant.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JAMES J. FOSTER, being duly sworn, deposes and says that he is associated with the firm of Cahill Gordon & Reindel, attorneys for plaintiff herein; that he makes this verification as agent for the plaintiff; that he has been active in the investigation and prosecution of this action for more than three years and is thoroughly familiar with all of the relevant facts known to, and contentions made by, plaintiff; that he has read the foregoing answer to interrogatories; that to his best knowledge, information and belief such answers are true and contain all the information available to the plaintiff corporation which is responsive to the respective interrogatories.

James J. Foster
JAMES J. FOSTER

Sworn to before me this
5th day of September, 1974

Robert R. Cawthra
Notary Public

ROBERT R. CAWTHRA, JR.
Notary Public, State of New York
No. 31-0505710
Qualified in New York County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

PITTSBURGH COKE & CHEMICAL COMPANY,

Plaintiff,

-against-

LOUIS J. BOLLO,

Defendant.

SUPPLEMENTAL ANSWERS TO INTERROGATORIES Set No. 1

Civil Action No. 71C305

Plaintiff makes the following supplemental answers to defendant's interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure.

12. If the answer to Interrogatory No. 11 is "Yes", state:

(a) The name of each such supplier;

(b) The date on which each such contract was executed; and

(c) The annual dollar volume of sales by Standard of each such supplier's products from the date of execution of such contract to the present.

Name of Supplier	Date on which Contract was Executed	Annual Sales 1969 (000)	Annual Sales 1970 (000)	Annual Sales 1971 (000)
Narco	3/69	$461	$583	$764
Purolator	11/70	--	12	56
Scott	9/68	NA	96	153

There are 29 other suppliers, not under contract with Standard immediately prior to December 31, 1967, who have entered into a contract with Standard since that date. None of them do substantial volume through Standard. For years prior to 1971, no separate sales records were kept for those 29 suppliers because of the limited volume.

14. If the answer to Interrogatory No. 13 is "Yes", state:

(a) The name of each such supplier; and

(b) The annual dollar volume of sales of each such supplier's products from September 18, 1969 to date.

Supplier	Annual Sales 1969 (000)	Annual Sales 1970 (000)	Annual Sales 1971 (000)
Energy Controls (Bendix)	$1245	$1769	$421
Electric Power (Bendix)	379	489	155
Fluid Power (Bendix)	36	41	22
Electrodynamics (Bendix)	(did not increase)		
Filter (Bendix)	13	24	26
Goodyear	787	649	802
Pesco	77	108	119
Electrical Components (Bendix)	472	511	340
Champion	481	413	743
Monotone	303	284	312

For years prior to 1971, no separate sales records were kept for any but the major suppliers.

STATE OF NEW YORK)
: ss.: 76
COUNTY OF NEW YORK)

JAMES J. FOSTER, being duly sworn, deposes and says that he is associated with the firm of Cahill Gordon & Reindel, attorneys for plaintiff herein; that he makes this verification as agent for the plaintiff; that he has been active in the investigation and prosecution of this action for more than three years and is thoroughly familiar with all of the relevant facts known to, and contentions made by, plaintiff; that he has read the foregoing answer to interrogatories; that to his best knowledge, information and belief such answers are true and contain all the information available to the plaintiff corporation which is responsive to the respective interrogatories.

James J. Foster
JAMES J. FOSTER

Sworn to before me this
5th day of September, 1974

Robert R. Cawthra, Jr.
Notary Public

ROBERT R. CAWTHRA, JR.
Notary Public, State of New York
No. 31-0505710
Qualified in New York County
Commission Expires March 30, 1975

77-274

WILMINGTON SECURITIES INC.
RE:PITTSBURGH v BOLLO

10/16/74

[transcript pages 1-198]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

PITTSBURGH COKE & CHEMICAL CO., :

Plaintiff, : 71-C-305

-against- :

LOUIS J. BOLLO, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

October 16, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

GENE RUDOLPH
OFFICIAL COURT REPORTER

Appearances:

MESSRS. CAHILL, GORDON & REINDEL
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005

BY: PAUL W. WILLIAMS, ESQ.
FLOYD ABRAMS, ESQ.
JAMES FOSTER, ESQ.

MESSRS. PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Defendant
345 Park Avenue
New York, New York 10022

BY: ALLAN BLUMSTEIN, ESQ.
ANTHONY M. RADICE, ESQ.

1 MR. WILLIAMS: I am prepared to start, your Honor, if you would like.

THE COURT: All right.

Does anyone have a marked set of pleadings for the Court?

MR. WILLIAMS: Yes.

THE COURT: I do not insist on it, but it would be a convenience.

MR. WILLIAMS: I anticipated that.

Mr. Clerk, would you hand that to the Court?

THE COURT: I am not taking your working copy, am I?

MR.WILLIAMS: It's all right. It doesn't have anything on it, except at the side it is marked "admitted" or "denied," and so on. But it is the copy that I have used, but keep it because my associate has another copy.

THE COURT: All right. Are you ready to start testimony or do you wish to make an opening statement? Bear in mind I have some familiarity with the briefs, so I have a generalized idea of what the case is all about.

MR. WILLIAMS: I think we can start with our first witness, in the interest of time.

THE COURT: I think so.

BEST COPY AVAILABLE

MR. WILLIAMS: Because I assume --

MR. BLUMSTEIN: I am in full agreement with that.

MR. WILLIAMS: Because I assume the Court will acquire a greater familiarity with this as we proceed.

May it please the Court, I think the first thing that comes before the Court is the stipulation which was entered into by the attorneys for both sides, and it is listed as Plaintiff's Exhibit 1.

May I hand it to the Court and I will read, if I may, portions of it to the Court, to familiarize your Honor with the matter which is to be tried.

The following facts are hereby stipulated for purposes of this case only, without conceding the relevance or materiality of any such facts and without prejudice to each party submitting further proposed findings and evidence on these or any other matters and on the understanding that this stipulation does not purport to be a complete statement of all facts pertaining to the events covered.

The first paragraph describes the purchase by the -- the First Grant Corporation, which was the predecessor of Pittsburgh Coke & Chemical Company, of shares of stock of Standard Aircraft Equipment Company. I might read that because it is a little

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complicated.

"One, on June 8, 1967, the First Grant Corporation purchased from Louis J. Bollo 20,000 shares and from Standard Aircraft Equipment Co., Inc. 64,000 shares of the stock of Standard for $588,000. Prior to June 7, 1967, First Grant Corporation had purchased 23,000 shares of Standard. FGC, which is for First Grant Corporation, received at the end of 1967 a stock dividend of 5,349 shares. First Grant Corporation's ownership of Standard as at the beginning of 1968 totalled 112,349 shares, representing 25 percent of the outstanding shares of Standard."

Now we come to the agreement which on -- on the basis of which this lawsuit is brought.

"Two, on December 20, 1968, Louis J. Bollo entered into a contract with First Grant Corporation pursuant to which First Grant Corporation made a tender offer on December 31, 1968 to the stockholders of Standard, other than Louis J. Bollo, for their shares at $16 per share. Pursuant to this tender offer, 71,309 shares were tendered and First Grant Corporation paid a total of ~~$1,140.944~~ #1,140,944 for them as follows."

Then it describes how it was done.

"The contract also provided that First Grant would purchase from Louis J. Bollo at $16 per share the

difference between 354,960 shares, representing 80 percent of the outstanding shares of Standard, and the number of shares held by First Grant after buying the shares tendered by the other stockholders.

Pursuant to this provision of the contract, First Grant paid $2,740,832 to Louis J. Bollo for 171,302 shares, or roughly 39 percent of the shares of Standard.

Another provision of the contract gave Louis J. Bollo the option of selling his remaining his remaining shares of Standard to First Grant Corporation at $12 per share or a multiple of 15 times the average annual earnings per share for the three prior years. Pursuant to this provision, First Grant Corporation paid Bollo $948,504 for 79,042 shares on August 4, 1970.

The sale was closed on September 18, 1969.

Then the fourth paragraph lists the inventory write-offs during the years 1961 to 1968. Standard had the following year-end write-offs of inventory.

In the year 1962, $10,000.03.

In 1963, none.

In 1964, $21,600.02.

In 1965, $60,100.00.

In 1966, none.

In 1967, $45,285.15.

In 1968, none.

The fifth paragraph simply relates to the fact that there will be no objection made to the authenticity of certain documents and additional documents which are attached to the stipulation.

"Six, on February 19, 1971, First Grant Corporation was merged into Pittsburgh Coke & Chemical Company, which succeeded to the rights of First Grant Corporation, including all claims against defendant. On June 30, 1972, Pittsburgh Coke & Chemical Company and Pittsburgh-Wilmington, Inc. were merged to form Wilmington Securities, Inc., which succeeded to all rights of Pittsburgh Coke & Chemical Company, including all claims against defendant."

So, your Honor, any recovery in this action will of course go to Wilmington Securities, Inc., but the complaint has not been amended to indicate that Wilmington Securities, Inc. is now the plaintiff or the assignee.

"Seven, the chart below lists in thousands of dollars the annual sales of Standard by supplier for the largest suppliers and the total sales for the company."

I will not read that list, your Honor, but

these figures will become significant as the trial proceeds.

Your Honor will recall that the complaint sets forth three causes of action. The first is for recovery based on the violation of Section 10(b)5.

The second is for breach of contract.

The third is for common-law fraud.

In the complaint we sought a recovery of -- I think it was $2,400,000, when we drew the complaint, but we find now, based on testimony of witnesses that will be produced here, the actual damageswill be around $3,100,000 and at the appropriate time we seek to amend the complaint to have the complaint conform to the proof.

THE COURT: All right.

MR. WILLIAMS: I am now prepared to call my first witness.

THE COURT: All right.

MR. WILLIAMS: Mr. McDowell, please.

(Continued on next page.)

PUTNAM B. MC DOWELL, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q What is your address, Mr. McDowell?

A 5822 Howe Street, Pittsburgh, Pennsylvania.

Q By whom are you employed?

A The Hillman Company of Pittsburgh.

Q And what is your position with the Hillman Company of Pittsburgh?

A I'm a vice president and director of the Hillman Company.

Q Do you have any position with the Standard Aircraft Equipment Company?

A I do. I'm chairman of the board of Standard Aircraft.

Q When did you become chairman of the board?

A In either very late 1968 or early -- excuse me. Excuse me. That would have been in September of 1969.

Q What is your education, please, will you tell the Court?

A I have an A.B. degree in government from Harvard College and a degree -- graduate degree in business

administration from Harvard.

Q What is the relationship of the Hillman Company to First Grant Corporation?

A First Grant was a subsidiary of Pittsburgh Coke & Chemical Company which in turn was a subsidiary of the Hillman Company.

Q Did you hold a position with First Grant Corporation?

A I did.

Q And what was that, please?

A I was president of First Grant Corporation.

Q In what year was that?

A I was elected president of First Grant on, I believe, December 2nd, 1968.

Q What was your first contact with Standard Aircraft Equipment Company?

A In early October of 1968, I attended a luncheon in our offices in Pittsburgh, at which Lou Bollo was ~~present~~ present.

Q Who is Lou Bollo?

A He's -- he was the president and principal stockholder of Standard Aircraft at that time.

Q And he is the defendant in this action?

A He is.

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Q Did you at any time -- was it determined at any point in time that First Grant Corporation was going to purchase a majority interest in Standard?

A Yes, it was.

Q Would you tell us please when?

A During the fall of 1968 and those discussions culminated in an agreement to purchase which you have referred to, dated December 20th of 1968.

MR. WILLIAMS: I ask the Clerk to mark for identification as Plaintiff's Exhibit No. 2, this document.

THE CLERK: Right.

MR. WILLIAMS: Please hand this copy to the Court.

THE CLERK: Yes, I'll give it to the Court. A 21 page document marked for identification as Plaintiff's Exhibit No. 2.

(So marked)

MR. WILLIAMS: May I hand the Court a copy of this?

THE COURT: Surely.

BY MR. WILLIAMS:

Q Mr. McDowell, I show you Plaintiff's Exhibit No. 2 and ask you if this is the agreement which you referred

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to?

A It is.

Q And did you sign that agreement?

A I did.

Q Do you see your signature there?

A I do.

MR. WILLIAMS: I offer it in evidence, your Honor.

MR. BLUMSTEIN: No objection, your Honor.

THE COURT: No objection. All right. Let it be marked in evidence.

THE CLERK: May I have it, sir?

Plaintiff's Exhibit No. 2 now marked in evidence.

(So marked)

MR. WILLIAMS: Your Honor, to save time, I will not read this 21 page exhibit, but I would like to say that we rely in this action primarily on Sections 2(e), 2(f), 6(d) and 9 and I would like to refer to those and perhaps read them. Paragraph 2(e), reads as follows: It is on Page 3.

"There have been furnished to Purchaser financial statements of Standard, consisting of balance sheets as of December 31, 1965, December 31, 1966

and December 31, 1967, and income statements and related notes for the years ending December 31, 1965, December 31, 1966, and December 31, 1967, accompanied in each instance by the opinion of Byrnes & Baker, Certified Public Accountants, and a balance sheet as of September 30, 1968 and an income statement for the nine-month period then ended, prepared from the books and records of Standard without an audit. Except as otherwise specifically set forth in said statements or in the accompanying accountants' certificates, all such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved. All such statements fairly present the financial position of Standard as of the dates thereof and the results of operations for the periods indicated.

2(f) reads as follows:

"Since December 31, 1967, there has been no material adverse change in the financial condition or in the business or operations of Standard."

Paragraph 6(d) reads as follows:

"The representations and warranties contained in Paragraph 2 of this Agreement shall be true and

correct as of the Closing Date, with the same force and effect as though they had been made at the Closing Date, and there shall have been delivered to Purchaser the certificate of Bollo, President of Standard, dated the Closing Date to such effect, and that since September 30, 1968, Standard has not increased any salaries except as described in Bollo's letter of December 18, 1968, to Mr. R. M. Johnston, or paid any dividends on its stock, and that its experience in warranty liabilities does not differ from that described in said letter of December 18, 1968.

Paragraph 9 reads as follows:

"All representations of Bollo contained in Paragraph 2 hereof shall survive the closing. Bollo covenants and agrees to indemnify and hold Purchaser harmless from any and all loss or damage incurred by Purchaser by reason of the breach of any of the representations and warranties set forth in Paragraph 2 hereof, provided (1) that Purchaser shall have given Bollo written notice of such breach of Paragraph 2 within three (3) years from the Closing Date, and (2) that Bollo shall be afforded an opportunity to defend in the name of Standard, but at Bollo's expense and by counsel of his choosing, any claim on

account of which Purchaser may assert liability hereunder.

BY MR. WILLIAMS:

Q Mr. McDowell, when did the closing -- did the closing take place?

A It did.

Q When did the closing take place?

A On September 18, 1969.

Q Why was the closing delayed some months?

A The portion of the agreement dealing with the acquisition of stock from Mr. Bollo was subject to approval, both the Secruities & Exchange Commission, and the Civil Aeronautics Board, and it simply took a long time to get those approvals.

Q And they were finally approved?

A They were.

Q I show you -- I ask the Clerk to mark for identification a document, which is entitled September 18, 1969, First Grant Corporation, Plaintiff's Exhibit 3.

THE CLERK: Three, a four-page document marked Plaintiff's Exhibit No. 3.

(So marked)

Q I show you Plaintiff's Exhibit 3 for identification and I ask you what that is?

A This is the warranty and representation signed by Mr. Bollo at the time of the closing, dealing with matters which you have discussed and generally speaking about no material adverse change in the condition of the company.

Q Do you see Mr. Bollo's signature on that?

A I do.

Q Was that handed to you at the closing?

A It was.

MR. WILLIAMS: I offer it in evidence, your Honor.

MR. BLUMSTEIN: No objection.

THE COURT: Mark it in evidence.

THE CLERK: So marked, Plaintiff's Exhibit No. 3 in evidence.

(So marked)

MR. WILLIAMS: A copy for the Court, please.

THE CLERK: Yes.

MR. WILLIAMS: Your Honor, to save time, I will not read into the record portions of the December 20, 1968 agreement. However, I will state that the sections of the agreement which we are primarily relying on in this action are Paragraphs 1(e) and 1(f).

As a matter of fact, I might read 1(e) and 1(f). I'm sorry. Thank you. It is not the December agreement. It is the September 18, 1969 certificate. And 1(e) is, as follows:

"There have been furnished to Purchaser financial statements of Standard, consisting of balance sheets as of December 31, 1965, December 31, 1966, and December 31, 1967, and income statements and related notes for the years ending December 31, 1965, December 31, 1966, and December 31, 1967, accompanied in each instance by the opinion of Byrnes & Baker, Certified Public Accountants, and a balance sheet as of September 30, 1968, and an income statement for the nine-month period then ended, prepared from the books and records of Standard without audit. Except as otherwise specifically set forth in said statements or in the accompanying accountants' certificate, all such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved. All such statements fairly present the financial position of Standard as of the dates thereof and the results of operations for the periods indicated."

And 1(f) reads as follows:

"Since December 31, 1967, there has been no material adverse change in the financial condition of the company as evidenced by most recent balance sheet information except that, as you know, earnings in 1969 have been reduced due primarily to the investment in start up expenses of our Kansas City operation."

ls.

(Continued on next page.)

DIRECT EXAMINATION

BY MR. WILLIAMS (Cont'd):

Q Now, did Mr. Bollo produce to First Grant Corporation in conjunction with the discussion of the agreement with the -- and the closing, any financial statements?

A He did.

MR. WILLIAMS: I ask the clerk to mark for identification a two -- two financial statements. One is -- they are both titled -- did I say two? A document, entitled Standard Aircraft Equipment Company, Inc., and its subsidiaries, report December 31, 1966.

And another, the next is the same title, but 1967.

Mark them together?

THE CLERK: Mark them A and B?

MR. WILLIAMS: I 's December 31, 1965, 1966, 1967, and the nine-month statement, which is not labeled nine-month statement but is called Standard Aircraft Equipment Company, Inc., Consolidated balance sheet.

THE CLERK: These are for identification; is that right?

MR. WILLIAMS: Foridentification.

THE CLERK: All right. The first report I marked, which is dated December 31, 1965, Plaintiff's Exhibit No. 4 for Identification.

(So marked.)

THE CLERK: The next report is dated December 31, 1966, marked as Plaintiff's Exhibit No. 5 for Identification.

(So marked.)

THE CLERK: The next report dated December 31, 1967, marked as Plaintiff's Exhibit No. 6 for Identification.

(So marked.)

THE CLERK: And the other one is a one-page document --

MR. WILLIAMS: Two pages, I think, isn't it?

THE CLERK: There is only one I see, unless you have the other. Do I have the right one?

MR. WILLIAMS: That's right. Okay. You're right.

THE CLERK: Yes. This will be a one-page document marked for identification as Plaintiff's Exhibit No. 7.

(So marked.)

THE COURT: Is there a date on that last one?

THE CLERK: He didn't call the date, your Honor.

MR. WILLIAMS: No, there is no --

THE CLERK: No date.

MR. WILLIAMS: There are dates at the top. It says as of 9/30/68, one column, and the second column figures read as of 9/30/67.

THE CLERK: Is that the first page?

MR. WILLIAMS: Yes. Up here.

THE CLERK: Yes. As of 9/30/68, as of 9/30/67. Right, your Honor.

MR. WILLIAMS: Would you hand these to the Court? These are copies.

THE CLERK: Yes.

BY MR. WILLIAMS:

Q Mr. McDowell, I show you Exhibits for Identification 4 through 7, and ask you if these are the financial statements that you have referred to?

A They are.

Q Were these produced by Mr. Bollo?

A Yes, sir, they were.

MR. WILLIAMS: There is no objection to these, your Honor. I offer them in evidence.

MR. BLUMSTEIN: I have no objection.

THE COURT: Mark them in evidence.

THE CLERK: May I have them?

BY MR. WILLIAMS:

Q Now, Mr. --

THE CLERK: Plaintiff's Exhibits No. 4, 5, 6, and 7, now marked in evidence.

(So marked.)

Q Mr. McDowell, would you describe to the Court generally the business of Standard Aircraft Company?

A Standard Aircraft --

MR. BLUMSTEIN: Your Honor, we are talking about today or at sometime in the past?

MR. WILLIAMS: Well, as of 1968, 1969.

MR. BLUMSTEIN: Thank you.

MR. WILLIAMS: I just want a general description of how they operate.

MR. BLUMSTEIN: I just wanted to know.

THE WITNESS: Standard Aircraft bought certain aviation materials and components and resold them to owners of aircraft, either airlines or corporate operators of aircraft or private aviation.

The company also, through a subsidiary, did a certain amount of repair work on wheels and

brakes and certain instrumentation.

BY MR. WILLIAMS:

Q Would the term "distributor of aircraft parts," would that be appropriate to use?

A That's correct.

Q In connection with their business?

A Yes.

Q Can you give us some examples of suppliers or manufacturers, as you call them?

A Champion Spark Plugs, ~~Sony-To~~ Sonotone, Batteries, the Narco line of instruments, N-a-r-c-o, the company distributed products of several divisions of Bendix Corporation, Whittaker Corporation and quite a number of others.

Q From whom can a customer buy parts other than from Standard, or distributor? I suppose some other disbritubors?

A There are many distributors.

Q Who are your competitors?

A Van Duesen, Air Work, -- Pacific Air Motor. Those are the larger companies and when you drop down to the other competition, they're virtually endless in ~~nuiber~~ number, smaller ones.

Q Could a customer buy from manufacturers?

A Normally, if a manufacturer distributed through

a distributor such as Standard Aircraft, he would not be selling direct. But I'm not certain there were not exceptions to that.

Q How did Standard make a profit?

A By selling the product at a price sufficiently above what it paid the manufacturer to cover ~~it's~~ its operating expenses, costs, and leaving a residual profit.

Q Let's see if I understand you.

Standard would buy at a discount, is that it, from the manufacturer or supplier?

A That's correct.

Q And that discount would vary with different companies?

A It did.

Q Or from time to time?

A It did.

Q And that discount then would represent -- well, did the supplier also sell at discount to the airlines and general aviation?

A The manufacturer?

Q The manufacturer.

A I believe normally he did not if ~~if~~ he was using a distributor there would be a few exceptions to that case.

Q So the reason why a -- an airline or general aviation company would buy from a distributor is -- is what?

A They are the normal available source of the products that we're talking about. The distributor stocks them in a convenient location and it has a -- the exclusive or shared distribution rights with other distributors in the area and those distributors would be the source and sometimes the only source of those products for the airline or the general aviation business.

Q To what extent is the amount of profit that Standard makes dependent on the discount it obtains from the manufacturer?

A Well, that's -- the discount is the sole source of potential profit. It must have a discount and a sufficiently large discount to cover its costs and expenses, if it's going to make money.

Q If a manufacturer didn't give you a discount, would you handle his products?

A I can't imagine circumstances under which you would.

Q How would a manufacturer distribute its products if it didn't use distributors such as Standard?

A The manufacturer would set up a physical

distribution arrangement with warehouses or stores and have to build a sales department of representatives who would make the normal sales calls and service calls on the buyer.

Q Did Standard have branches around the country?

A Yes, it did.

Q What was the purpose of that?

A To provide easy access to the products by the buyer or, that is, turning it around, a short delivery time.

Q And that is -- I would assume another reason why the manufacturer or supplier would furnish a distributor with his products?

A He would do that in order to avoid the expenses and difficulty and investment involved in maintaining his own distribution setup.

Q How important was the relationship between Standard and the manufacturers to Standard as a business?

A Well, it was critical. Without such a relationship and the good relationship, Standard would have no product to sell.

Q I come now to the subject of inventory.

Is Standard's inventory important to its ability to go about its business?

A It's essential in that you must have the invent

in order to meet the requirements of the customer, and it is the dominant asset of a distributing company. It would make up perhaps 60 per cent of the total assets of the company.

Q How important is it to a company such as Standard that the inventory that it has be capable of being sold?

A Well, it must be saleable or you do not have a business and to have a profitable business, the inventory has got to be in a good clean condition, so that it turns over rapidly, in order that your money is working for you as hard as possible.

(Continued on next page.)

fols.

Q Suppose there is dead stock in inventory and you don't write it off, what are the consequences?

A That inflates the value of the inventory and thereby inflates the net worth of the company.

Q When did you first meet Mr. Louis J. Bollo?

A In early October of 1968.

Q I think we have already identified his position with Standard Aircraft. He was the President?

A That is correct.

Q At the time the December 20, 1968 agreement to purchase stock was entered into, what information had Louis Bollo given First Grant that any discount in effect between Standard and any other large suppliers had been cut?

MR. BLUMSTEIN: I am not objecting on the grounds of leading, but I think this is an area where I prefer to have the question --

THE COURT: I think Mr. Radice has a somewhat justifiable complaint at this point.

MR. WILLIAMS: I will go at it another way.

BY MR. WILLIAMS:

Q When you signed the agreement on December 20, 1968, did you know that any of the discounts from any of the large distributors had been cut to a very substantial degree?

A I did not.

Q Was such information of importance in determining whether you would purchase Standard Aircraft?

A It would have been important.

Q Did Louis Bollo, the defendant in this action, at any time prior to September 18, 1969, tell you in words or substance that a supplier called Wittaker Company had advised Standard that it would no longer give Standard all the business it had previously given it?

A He did not.

Q Did you attend a meeting of the Board of Directors of Standard in May 1969?

A Yes, I did.

Q Who attended this meeting, please?

A Mr. Bollo, I believe Mr. Lewis, who was a Director, possibly Mr. Leach, Orrin Leach, who was also a Director.

I was present representing First Grant and I believe others of the management, such as Mr. Jerry Bollo and Ernie Rushes were there.

It was held in the offices of the company and therefore there were quite a few people in and around the meeting.

Q You referred to members of the management. You mean the members of the management of Standard Aircraft?

A I do.

Q You say it was held in the office of Standard?

A That's correct.

Q Were you the only representative of First Grant present?

A Yes, I was.

Q Would you tell us if anything was said -- I don't want all of the things that transpired at the annual meeting and directors meeting, but was anything said at that meeting about Standard's future business with 747s or DC 10s or L1011s, the so-called new generation or second generation of jet aircraft?

A Yes. There was discussion about the potential business for Standard Aircraft on the 747s in particular, and the indication was that --

Q Don't tell us what the indication was. Tell us, please, what was said. I don't want any conclusions, if you please.

A We were told that certain of Standard's suppliers, such as Whittaker and Bendix, would have a good position on the 747s and therefore that Standard Aircraft stood to come into a substantial increase in business on account of the 747s.

There was an estimate provided that each 747 would generate, I believe, $250 to $300,000 per aircraft of the type

of products which Standard Aircraft then distributed.

MR. BLUMSTEIN: Can we ascertain from Mr. McDowell who told him these particular things?

Q To the extent you can, can you please tell us who gave this information.

A This information was brought out in the Directors' meeting and either came from Mr. Lou Bollo, who was serving as Chairman of the meeting, or from one of the other officers or Directors, at his direction.

Q Did you make a memorandum of what transpired at this Directors' meeting?

A Yes, I did.

MR. WILLIAMS: Mr. Clerk, would you please mark for Identification this document.

THE CLERK: Four-page document marked for Identification as Plaintiff's Exhibit No. 8.

(So marked.)

Q Mr. McDowell, I show you Plaintiff's Exhibit No. 8 for Identification and ask you if that is a memorandum which you prepared following your attendance at the meeting of the Board of Directors.

A Yes, it is.

Q Without reading this, does this memorandum reflect what transpired at the meeting?

A Yes, it does.

MR. WILLIAMS: I offer it in evidence, your Honor.

MR. BLUMSTEIN: No objection, your Honor.

THE COURT: No objection. Mark it in evidence.

THE CLERK: So marked in Evidence, Plaintiff's Exhibit No. 8.

(So marked.)

MR. WILLIAMS: While I regard this memorandum as important in its entirety, I will not take the time of the Court to read it all, but to read only a paragraph on page 3, the first full paragraph.

"Someone in the meeting estimated that when the 747s go into operation the amount of Bendix and Whittaker equipment on these airplanes may result in annual sales volume of $250,000 to $300,000 per 747 for Standard Aircraft.

"Whether this applies to all 747s or only to those in certain areas was not made clear. The point is that Standard feels that it is in an excellent position on the 747 program."

Q Please tell us what suppliers had products that were used on the jumbo jets, as far as Standard was concerned.

A Whittaker and Bendix are the two of which I am

aware -- possibly there were others, but I would not know about it.

Q Prior to September 1968, had you any view as to how important the market was with respect to the 747s, the DC 10s and the L-1011s?

A Yes. My view was that the 747s and the other wide body jets would become extremely important in airline operations and would be successful, and I drew that partly out of my background at that time of running an airline, and I looked forward to the 747s particularly as a source of considerable sales and profits for Standard Aircraft.

Q Was this one of the factors which you took into consideration in deciding to buy the stock of Mr. Bollo, the stock of Standard Aircraft Equipment Company?

A Well, since I was not aware of those kinds of factors at the time the December 20th agreement was written, I am not sure I can say that, but it certainly was a factor supporting our decision to close the transaction, because it was an indication that Standard continued to do well and had good prospects.

Q Had you known that Whittaker and Bendix had already indicated that they would not give Standard Aircraft business on the second generation jets, had you known that would you have bought the company?

MR.BLUMSTEIN: I will object to the form of the question. I think if there are communications from Whittaker and Bendix that they are the best evidence of what Whittaker and Bendix told Standard and they should be offered in evidence.

MR. WILLIAMS: Such telexes will be introduced as evidence, but I simply wanted to - realizing that that objection is proper -- without communications before the Court, I would like to ask this witness a hypothetical question, that if he had known there would be a cut-off, would he have bought the company, or bought the company at the price he paid for it.

THE COURT: Mr. Radice, without impairing your objection in any way, suppose I take this subject to connection and if the connection is not made then you remind me that I should dismiss it from my mind.

MR. WILLIAMS: I would consent to that, your Honor.

MR. BLUMSTEIN: May I make one other point, your Honor? I am Mr. Blumstein.

THE COURT: Sorry.

BY MR. WILLIAMS:

Q You may answer the question.

A Had we known prior to the closing of the

impending cancellation of those arrangements, it would have, at the very least, caused us to reassess the earning power of the company.

It might well have discouraged us from buying the company at all since we were dealing there with better than half of the total business, and it would certainly have caused us to examine all other possible discrepancies in this situation.

Q Bendix had two divisions, one is Navigation & Control and the other Energy Controls.

Again, subject to connection, your Honor -- If you had known, Mr. McDowell, that these companies, these divisions would no longer use Standard Aircraft as a distributor for the large jets, second generation jets, would you have bought the company for the price you paid?

A We would not have.

Q Do you know what position the Bendix Company had been in as a supplier, in terms of size or importance to Standard Aircraft?

A Yes. Bendix actually had more than two divisions. You mentioned two of the important ones, but the total Bendix business during 1968 was approximately five million dollars of total sales for the company, so it was by far the major part of the business.

Q To what extent were you ever advised by the defendant Bollo, prior to the closing, that he believed that Standard was in anything other than an excellent position with respect to getting the future provisionings of the 747s, the DC 10s and the L 1011s?

A The only limitation that was mentioned on the company's ability to do that was the possibility that the initial stocking might be performed by the manufacturer; that is, the initial stocking as against the on-going business that develops as the aircraft are flown.

Q But the parts business, what about those?

A The on-going parts business was --

Q The replacement parts.

A The replacement parts business was business that we expected to get.

Q Prior to September 1969, did you send anyone to Standard to report to you on its operations?

A Yes, I did.

Q And to make an investigation?

A Yes.

Q Who did you send?

A R.L. Bonar, my assistant for planning and control made one such visit during, I think, the summer of 1968.

Q Did he prepare and submit to you a written report of this visit?

A He did.

Q Is that V69 and not V68; is that correct?

A That's correct, excuse me.

MR.WILLIAMS: I ask the Clerk to mark as Plaintiff's Exhibit 9 this document.

THE CLERK: A six-page document marked for Identification as Plaintiff's Exhibit No. 9.

(So marked.)

Q I show you Plaintiff's Exhibit No. 9 for Identification and ask you if that is the report which Mr. Bonar submitted to you.

A It is.

MR. WILLIAMS: I offer it in evidence, your Honor.

MR. BLUMSTEIN: Your Honor, I have no objection to the document itself, but I do have this problem: it was produced by plaintiff for us at a deposition which we took of Mr. Bonar and the copy that we got had certain exhibits attached to it.

I think we established at the deposition that those exhibits were not prepared by Mr. Bonar but by a gentleman by the name of Mr. Kirby. Those exhibits

are not physically attached to this document. It is therefore not the document that came to us at the deposition and I was wondering what your intentions are with respect to the exhibits.

MR. WILLIAMS: My associate, who is admitted in this court, Mr. Foster, he conducted the deposition.

MR. FOSTER: Your Honor, I was at the deposition. There was documentary discovery in this case and attorneys for defendant Xeroxed a large number of documents. At some point inadvertently in the process some exhibits which had been prepared in 1970 by Mr. Kirby became stapled to their copy of this memorandum prepared by Mr. Bonar in 1969, and they were not at the time -- at the time I thought it was made clear at the deposition that it was not an exhibit to the memorandum at all.

MR. WILLIAMS: May I ask the witness to clear this up, your Honor?

MR. BLUMSTEIN: May I just ask Mr. Foster one question? The stipulation that we have regarding the authenticity applies to the exhibits even though they are now a separate document, is that correct?

MR. FOSTER: That applies to the exhibits that were identified at the depositions.

MR. BLUMSTEIN: Then I have no objection to this document.

THE CLERK: Plaintiff's Exhibit 9 now marked in Evidence.

(So marked.)

MR. WILLIAMS: Mr. Bonar will testify here, your Honor, incidentally.

I would like to read only one paragraph of this exhibit. That appears on what is the second page of the text under "Inventory Policies and Control." It is the fourth paragraph under "Inventory Policies and Control."

"Standard's inventory write-off policy requires that if an inventory item has no sales for inquiries within two years the inventory is written off to zero. The item stays at zero value with Standard for another two years after being written off. At the expiration of the ~~second~~ 2 year period, if no sales occur, it is donated to Standex for resale. Current accounting practice is to reserve $4,000 a month, or $48,000 a year, for inventory write-offs. This is roughly 1.4 percent of ~~year and~~ year-end 1968 dollar inventories."

BY MR. WILLIAMS:

Q Did you read this memorandum from Mr. Bonar

when you received it?

A Yes, I did.

Q Did you rely on that statement of inventory policy?

A I did.

Q Was that statement of inventory policy important to you in connection with this purchase?

A Yes, sir.

Q Would you tell the Court why.

A It gave me assurance that Standard Aircraft had a regular process for adjusting for slow-moving or obsolete inventory.

The formula as described seemed to me to be reasonable and therefore it tended to leave me not to be excessively concerned about the condition of the inventory, and to rely on the financial statements and the representations and warranties which I knew would subsequently be made.

MR.WILLIAMS: I have no further questions. Excuse me one moment.

I said 1968 in one case, I don't remember the question, but it should be September 18, 1969 and not 1968. With that correction I am through with this witness.

(Continued on next page.)

MR. BLUMSTEIN: Would it be all right if I examine from here? I will be closer to my documents and we can move along much faster.

THE COURT: Fine.

CROSS-EXAMINATION

BY MR. BLUMSTEIN:

Q Mr. McDowell, at the beginning of your testimony you explained a relationship between the Hillman Company and Pittsburgh Coke and First Grant, and I was not writing fast enough, so could you please give it to me once more?

A And you are asking about what date, please?

Q December of 1968.

A First Grant was a subsidiary of Pittsburgh Coke and Chemical Company. Pittsburgh Coke and Chemical was in turn a subsidiary of the Hillman Company.

Q Can you describe for me as of December 1968 what the business of Pittsburgh Coke & Chemical Company was?

A It was an investment holding and operating company which had some wholly-owned subsidiary activities and a number of investment positions in other companies.

Q During the preceding five years, let us say, had it made a number of investments in other companies, acquisitions, matters of that sort?

A Yes sir, it had.

Q Can you give me the names of some of those acquisitions, the names of the companies that you acquired?

A All right. You are asking about the five year period prior to 1968; in other words, 1963 through '68?

Q Correct.

A I am going to have some difficulty with that because I can't place the exact dates of some of our acquisitions.

We had by that time made one or two. In late 1965 we acquired the assets of the Marion Power Shovel Division of another company. We had during that general period acquired the interest -- the controlling interest in Wilson Marine Steamship, which became First Grant. That was done via a merger with another steamship company.

We had acquired a clay type operation for incorporation into a pipe company which we owned.

We had acquired through First Grant the principal interest in American Flyers, a certificated carrier with Trans-Atlantic rights.

Our investment in Standard Aircraft. I think that's all I can recall, but I am not sure that there were not more during that general period. And may I add that I am speaking now of the activities of the Pittsburgh Coke & Chemical as distinct from Hillman as a whole, because during

most of that period I was an officer of Pittsburgh Coke & Chemical.

I did not become an officer of the Hillman Company until some time later, perhaps in the latter part of the period that you are mentioning, but I am not certain.

MR. BLUMSTEIN: Let me have this particular document marked.

Q After it is marked for identification, I will show it to you and direct your attention to certain pages and see if that enhances your recollection of the business activities of Pittsburgh Coke during that period.

THE CLERK: A document with various pages stapled together marked for identification as Defendant's exhibit A.

(So marked.)

Q Let me show it to you and ask you whether you have ever seen it before?

A Yes, I have seen this.

Q Could you describe it for us, please; tell us what it is.

MR. WILLIAMS: A little bit louder, I can't quite hear either one of you here.

Q Could you describe it for us?

A This is a description of an offer by

Pittsburgh Coke & Chemical to exchange shares of American Company held by Pittsburgh ~~Company~~ Coke for common and preferred stock of Pittsburgh Coke & Chemical held by minority shareholders.

Q What is the date of that document?

A It is June 24, 1969.

Q Would you direct your attention to the text commencing on page 31, which is headed "Business of Pittsburgh Coke" and take a look at that.

You have read that document before, I take it?

A Yes I have.

Q And you are acquainted with its contents?

A That's correct.

Q To the best of your knowledge, is ~~it~~ the material that appears from page 31, and on the subsequent pages under that heading, a fair and accurate description of the busines of Pittsburgh Coke?

A Yes, sir, it is.

MR. BLUMSTEIN: Your Honor, in lieu of going through any of the details, and to expedite the proceeding, I would like to offer this document in evidence.

THE COURT: You wouldn't happen to have a photostat of it or a xerox of the one page, would yo

MR. BLUMSTEIN: I'm sorry.

MR. WILLIAMS: I would object except to the page that has relevance.

THE COURT: Can the page be torn out without impairing the whole, and separately be marked as an exhibit?

MR. BLUMSTEIN: I will limit my offer to the section which begins on page 31 entitled "Business of Pittsburgh Coke" and continues until the middle of page 39.

MR. WILLIAMS: I haven't seen this document, your Honor. May I have a moment?

THE COURT: Yes.

MR. BLUMSTEIN: My offer is limited to page 31 through 39.

MR. WILLIAMS: I have no objection.

MR. BLUMSTEIN: I will have copies made for everyone.

THE CLERK: Defendant's exhibit A now marked in evidence on conditions indicated to the Court, pages 31 through 39, middle of the page.

(So marked.)

BY MR. BLUMSTEIN:

Q You mentioned before that the SEC and CAB

approval for the transaction of September 1968 were required; is that correct?

A Yes.

Q Can you tell me, sir, why approval from those two Government agencies was required?

A I think I can tell you in rather broad terms, but I have not reexamined documents on this matter for many years.

The SEC approval was required because we had become an investment holding company under the Act of 1940, and under that Act, the acquisition of additional -- an additional position in a company which was an affiliate, by virtue of our already owning 25 percent, required SEC approval.

I am a little less clear about the exact reason for the CAB approval. I believe it was because we had a position as an owner of an airline and there are CAB provisions designed to prevent any undue control of interests in the aviation field. But I can't be precise about exactly what that provision was. In any event, the approval was required by both agencies.

Q Thank you. I take it that you are aware that prior to the December 1968 agreement the First Grant Corporation had previously acquired a stock interest in Standard; is that correct?

A Yes.

Q And it has been stipulated that on June 8, 1967 certain amounts of shares were acquired from Bollo and from Standard?

A I am having a little difficulty hearing you.

Q I will try to keep my voice up. I'm sorry.

I am referring to the stipulation which says that this transaction took place on June 8, 1967.

Did you have any connection with the negotiations which led up to that purchase?

A I did not.

Q Were you aware that the purchase was made?

A I was generally aware, yes.

Q Did you have any discussions with anyone at First Grant or at Pittsburgh Coke concerning the purchase?

A I can't answer yes or no to that. I might have. It would have been casual since I was not directly involved in the affairs of First Grant at that time.

Q In any event, you did not participate in the negotiations nor did you have any direct responsibility for that transaction?

A That's correct.

Q What about the negotiation of the December 1968 agreement, were you involved in the negotiations [illegible]

which led to that agreement?

A - I was not.

Q Can you tell me who at First Grant was, if you know?

A My exact knowledge of that is very limited. I would have to speculate that Mr. Tom Binger, who was my predecessor as president of First Grant, was involved.

I do know that my associate, Mr. Johnston was involved.

Q Do you know if Mr. Henry Hillman was involved to any degree?

A I believe he was.

Q Do you happen to know what the extent of his involvement was?

A No, I do not.

Q Mr. Binger, I think you mentioned, was your predecessor as president of Pittsburgh Coke?

A First Grant Company.

Q I'm sorry. When did you succeed him?

A On December 2, 1968.

Q Do you know what position Mr. Binger took on after that? Did he continue with First Grant?

A He did not continue with our company or any affiliate. I believe that he went to work for the ~~Beamis~~ E Bemis

Company.

Q Do you have any information as to his present whereabouts, as to what he is doing now?

A I believe that he is now engaged in the iron ore business, which he was in prior to joining us.

Q You said, I think, on direct, that your first contact with Mr. Bollo was in October of 1968 at a lunch in Pittsburgh; is that correct?

A Yes.

(Continued on next page.)

Nxt

Q Can you tell us who else was present at that lunch?

A Mr. Hillman, Mr. Johnston and there were others but I do not recall who they were.

Q Other representatives of First Grant or Pittsburgh Coke?

A Yes.

Q Any other representatives of Standard that you remember being present?

A Not that I recall.

Q Can you tell me, as best you recall it, what matters may have been discussed at this lunch, if any, concerning the transactions which eventually resulted in the December, 1968 agreement?

A I do not recall the discussion at the luncheon. I only recall the event and the participants as I indicated.

Q I see.

Now, after that, did you have occasion to meet Mr. Bollo again?

A Yes.

Q When was the next such occasion?

A I believe I visited with Mr. Bollo at Standard Aircraft in the early or -- winter of the following year, 1969.

Q How about the date March 19, 1969, does that

refresh your recollection?

A That sounds correct.

Q And you came from Pittsburgh to New York and met with Mr. Bollo?

A That's correct.

Q Did you meet with any other representatives of Standard on that occasion?

A Yes. I remember in particular that we visited the subsidiary, ~~Stand-Aire~~ Standair, and I met Mr. Didi. I feel quite sure that I did meet other members of the management, although I don't have a direct or clear recollection on that.

Q Now, how long did you spend at Standard on that particular occasion?

A It was less than a full day.

Q What was the purpose of your visit?

A To become acquainted with Mr. Bollo and the nature of his operation and other people in the company.

Q Can you tell me, as best you recall it, the discussion you may have had with Mr. Bollo on that day concerning the affairs of Standard?

A No, I cannot. I believe it was a very general conversation about the nature of the business, and so on.

Q Was this the first time that you had become acquainted with the nature of the business?

A It was the first exposure to the business that I had had through the management of Standard Aircraft.

Q I see.

A Prior to that time, I'm sure that I had heard considerable information about Standard Aircraft from my own associates.

Q Who would those associates have been?

A That would be Mr. Johnston, in particular.

Q So as best you recall it, the March 19th discussion was a general one?

A Yes.

Q What was the next occasion that you saw Mr. Bollo? Would that have been the May 9th?

A That's -- I believe that was the next one, although there might have been other meetings in between. But--

Q I see. But you have no present recollection?

A No, I don't.

Q I want to ask you a few questions about Plaintiff's Exhibit 8.

Do you have a copy which I can give the witness?

MR. WILLIAMS: Yes.

Q Would you look at page 3, please? It is the first full paragraph, the one that begins "Someone at the meeting estimated," etc.

A Yes.

Q I think you have said in response to Mr. Williams' questions that this memo represented an accurate report by you of what had transpired at the meeting; is that correct?

A Yes.

Q That paragraph refers to certain statements, etc., that may have been made at that meeting concerning 747's and concerning Bendix and Whittaker.

The paragraph begins: "Someone at the meeting..."

Do you have any present recollection as to who that someone may have been?

A No, I do not.

Q It could have been anyone of the people you mentioned as being present at that meeting? Is that what you are telling me?

A Yes.

Q When those statements which are reflected in that paragraph were made, do you have any recollection that anyone else at the meeting disagreed with them to any extent, suggested that they were not perhaps accurate or correct?

A I do not.

Q Would you look at the second sentence in this paragraph, please, the one that reads: "Whether this applies to all 747's or only to those in certain areas was not made clear."

Do you have any recollection as to what the

phrase "in certain areas" may mean, what may have been said about that and why it is reported in the memorandum?

A The question in my mind at the time I wrote it was whether the market available to Standard Aircraft could be determined by multiplying 250 to 300 thousand dollars times the total number of 747's that were to be in operation or whether Standard Aircraft could expect that volume of business only on 747's which were serviced near the points at which Standard Aircraft had stores.

Q I take it that was what you were concerned about; is that what you have just said?

A I had that question in my mind, as to how to interpret the figures that I had been given.

Q I see. The interpretation of those figures was not made clear at the meeting?

A In that particular respect, that's right.

Q Did you ask any questions in that respect at the meeting?

A I don't remember.

Q Do you remember asking any questions in that respect after the meeting, at any time?

A At any time?

Q Yes.

A Well, I cannot recall specific instances but

I am sure this subject was discussed some time in the ensuing several years.

Q In the ensuing several years?

A Yes.

Q Do you recall whether it was discussed prior to September 18, 1969?

A I do not.

Q Do you recall making a third trip to Standard on September 18, 1969?

A Not to Standard.

If you are referring to the closing date?

Q Yes.

A That was not the location.

Q Where was the location of the closing?

A My memory is that it was at Franklin Bank in Manhattan.

Q But you did come to New York for the closing?

A Correct.

Q On that day did you happen to meet Mr. Bollo?

A Yes.

Q Did you have any discussions with him?

A I did, but I cannot recall the content of them.

Q At all?

A The principal discussion that I recall had to do

with the closing, which was to take place that day.

Q I see.

I think you said there came a point in time when you sent Red Bonar to Standard; is that correct?

A That's correct.

Q Do you recall when that was?

A During the early summer of 1969, I believe.

Q What was the purpose for sending Mr. Bonar to Standard?

A I wanted Mr. Bonar to become as familiar as possible with the operation of the business, with particular attention to the critical factors that were involved in the profitable operation of a business like Standard Aircraft.

He was my eyes and ears in that respect for Standard Aircraft and for other companies.

Q He had worked for you previously in connection with other companies?

A Yes.

Q And I take it that you had a high regard for his competence?

A I do.

Q And you still do?

A I did and I do.

Q Very good, sir.

Did you give him any specific instructions as to information you may have wanted concerning inventory, Standard's inventory, its policies, its practices concerning inventory?

A I don't remember.

Q Well, was it your general practice when you dispatched Mr. Bonar to give him specific instructions of that type or perhaps to give him more general instructions?

MR. WILLIAMS: Your Honor, I object to that question, what the general practice was. He said he did not in this instance.

MR. BLUMSTEIN: He said he did not recall.

MR. WILLIAMS: Did not remember, you are right. Said he did not recall.

MR. BLUMSTEIN: Did not recall.

THE COURT: Well, perhaps you ought to reframe the question, Mr. Blumstein.

MR. BLUMSTEIN: I will withdraw the question, your Honor.

(continued next page)

R2

CROSS-EXAMINATION

BY MR. BLUMSTEIN:

Q Let me ask you this. Is it a fair statement that in your judgment when Mr. Bonar went out, he did a thorough job and covered all aspects of what he was supposed ~~he was supposed~~ to do and it wouldn't have been necessary for you to single out a particular ~~testimony~~ aspect for him to concentrate on?

A I don't know how to answer that question. You refer to -- as I interpret it -- his doing a totally complete job. No one, no one will ever do that.

Q I --

A Could you simplify the question for me.

Q I think the word I used was a thorough job. You expected him to do a thorough job.

A I expected him to do a thorough job.

Q You didn't think you had to sit down with him and give him a list of questions of what he should ask and what he should find out?

A I probably did, some of just that.

Q You probably did do it?

A Yes.

Q But you don't recall whether you did it with respect to inventory or not?

A Yes.

Q But you don't recall whether you did it with respect to inventory or not?

A That's correct.

Q Did you ever discuss with Mr. Bonar, his memo which has been marked as -- or his report which has been marked as Plaintiff's Exhibit 9 after he returned from Standard? You know which one I am referring to?

A You are talking of the exhibit that I have in front of me now?

Q No, I don't think so.

A Oh, excuse me.

Q This is the report that Mr. Bonar submitted to you.

A I can only say, I'm sure that I did discuss it with him. I don't have any specific recollection of it.

Q Do you recall having any discussions with him concerning the statements he had made in the memo concerning Standard's inventory write-off policies?

A I don't recall that.

Q You don't recall having any such discussions?

A That's right.

Q Did you issue any further directions to him to make any further inquiry into Standard's write-off?

A I don't recall whether I did or not.

Q You think you may have?

A I could have.

MR. WILLIAMS: I move to strike that answer, your Honor, he could have, as no answer at all.

Q Did you receive any subsequent -- I'm sorry, your Honor.

THE COURT: It seems to me we have been a little hypothetical along here, so I've been listening to it with that in mind.

Q Let me ask this question. Do you recall receiving any further reports from Mr. Bonar, either orally or in writing, concerning Standard's write-off policies with respect to inventory?

A I don't recall any such reports.

Q In response to Mr. William's questions, you've told us something about the business of Standard in 1968 and '69. You covered such matters as suppliers, manufacturers, distributors, the significance of the discount rate, branches, et cetera.

I'd like to ask you, Mr. McDowell, when was it that you first began to become aware of the details of the business of Standard? Those details that you are testifying about on direct?

A Subsequent to the closing in the fall of 1969.

Q Did there come a point in time where you became aware that the contracts or most of the contracts between Standard and its suppliers were cancelable by the supplier on some short period of notice? Let's say 30 days?

A Yes, there was.

Q When did you become aware of that?

A I don't recall the date.

Q Well, could it have been at a time in 1970 when a certain agreement with Bendix was cancelled? Does that refresh your recollection as to when you first became aware of it?

A No. I would -- I would say that I knew it before the cancellation of the Bendix agreement.

Q Mr. McDowell, you do recall being deposed in this action?

A Yes.

Q That deposition was on January 16, 1973.

MR. WILLIAMS: Page?

MR. BLUMSTEIN: 33, please.

MR. WILLIAMS: Just a second.

Q Now, at the deposition were you asked these questions and did you give these answers? I'm starting at Line 8, Mr. Williams:

"Question: So, to the best of your recollection the first time you realized that any of Standard's distributorship agreements may be cancelable on 30 days notice was when the Bendix agreement was cancelled or shortly thereafter?

"Answer: I think it was the Bendix cancellation that brought my attention directly to the matter of the nature of the contracts. Up until that time, I was not knowledgeable about the form of contract the cancellation provisions."

Do you remember that question and that answer?

A I don't happen to remember it, no.

Q But --

A I'm sure it's accurate.

Q You're sure that the reporter took down the right words?

A Yes.

Q And is it your recollection that you were doing your best at this deposition to answer the questions truthfully and honestly?

A Yes, and I notice that I said I think.

Q Yes.

A I was not that certain.

Q I understand. Let me ask you this. Do you

have any question in your mind that you first became aware of these cancellation provisions after the closing? September, 1969?

A I think that's correct.

Q When you did become aware of those provisions of the contracts, did it have an impact on you? Was it important?

A I simply was aware of the fact that the contracts were not as permanent in nature as most contracts that I had been familiar with in other businesses.

Q I see. You said before that the relationship -- I am paraphrasing -- between Standard and its suppliers and manufacturers was a critical aspect of the business, is that correct?

A Yes.

Q And obviously the contractual terms pursuant to which the manufacturer or the supplier could end that relationship was a matter of some significance to that relationship?

A Yes, it would be.

Q And yet, you say you did not learn about that fact until after September, 1969?

A That's correct.

Q All right. As far as you know, it was never reported to you by Mr. Bonar? The gentleman you had

dispatched to Standard to find out about the company?

A I couldn't say that. If you put no time limit on it.

Q September, 1969?

A Prior to?

Q Yes.

A I think you are correct.

Q And after you did ascertain the fact of this cancellation provisions, did you happen to ask Mr. Bonar why he had not reported that consideration to you?

A No, I did not, that I can recall.

Q Mr. McDowell, I think sometime in 1970, I'm not sure of the date, you were apprised of certain results that were forthcoming from a Price Waterhouse audit of the books and records of Standard, and particularly in the area of inventory write-off, is that correct?

A Yes.

Q And what was the information that came to your attention at that time?

A Well, sometime during that fall, we became aware of the fact that we were going to have to write-off a substantial amount of obsolete and/or slow moving inventory.

Q Do you recall the amount that was going to have

to be written off?

A I don't recall the amount for that year, but I do recall that over a period of two or three years we had to write off in excess of a million dollars on that account.

Q And I take it that this was the first occasion that you learned of the -- of what you regard as the necessity to take that inventory write-off, is that correct?

A Yes.

Q Did you ever talk to Mr. Bonar about that subject?

A I probably did but I have no specific recollection of it. It was a subject of considerable conversation, I can assure you.

Rp fls.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. BLUMSTEIN (Cont'd):

Q Let me ask you this:

After September, 1969, you learned about the cancellation provisions in the distributorship contracts, you were also advised of the inventory write-off. These matters raise in your mind any doubt about how thorough a job Mr. Bonar had done when he visited Standard?

A No, they did not.

Q They did not.

A May I ask, when you refer to cancellation of contracts, what -- what specifically are you referring to?

Q I'm talking about the provisions in the contracts were, let's say, Bendix, Whittaker, and the other distributors, that they could be cancelled on 30 days notice.

A I see.

Q I hope that's what you were talking about, too.

A Yes.

Q Okay, good.

I want to ask you -- let me ask you this. I don't know whether you've answered it or not.

The December, 1968 agreement, one of the first steps was to be a tender offer by First Grant to the public

stockholders of Standard; is that correct?

A Yes.

Q And in fact that tender offer took place?

A Yes, it did.

Q And do you happen to know the date that the tender offer was made?

A No, I don't recall it.

Q You don't know that. You wouldn't know how long it remained effective?

A I don't recall those details.

Q Now, on September 18, 1969, Standard entered into an employment agreement with Mr. Bollo; is that correct?

A That's correct.

Q Do you remember what the term of that agreement was?

A I think it was a five-year employment agreement at a salary of something in the order of $50,000 a year. It may have been greater than that.

Q $65,000 refresh your recollection?

A That perhaps could be right.

Q Now, did there come a point in time after September 18, 1969, when you discussed with Mr. Bollo the subject of his resigning from the company and giving up his duties as president?

A Yes, there did.

Q And approximately when was that?

A I think it was in the fall of 1970.

Q Can you pinpoint it any better than that? If not --

A Well, I think perhaps October.

Q Okay.

Now, after that discussion, did Mr. Bollo in fact resign?

A I can't tell you whether he signed a letter of resignation, but he, in our conversation, acquiesced in my request and we jointly issued a notice within the company to that effect.

Q That he would no longer be the chief executive officer?

A I think that's correct.

Q And I take it he was replaced by someone?

A He was.

Q Who was that person?

A William Gillespie.

Q Now, after Mr. Bollo's resignation, so to speak did Standard continue to pay his sahry under the employment agreement?

A It discontinued those payments at sometime.

I don't recall when.

Q But for a period of time after, let's say October of 1970, the fall of 1970, those payments were continued?

A I don't recall that, one way or the other.

Q One way or the other?

A I know they were discontinued at some point.

Q Now, in terms of the date on which the salary was discontinued, does February, 1971, refresh your recollection in any way?

A I really do not have a recollection of when that occurred.

Q I see.

Well, can you tell me, if you have a recollection, the reasons why Standard determined not to pay Mr. Bdlo's salary?

MR. WILLIAMS: If your Honor please, I object to this. This is the subject of a lawsuit in the State Supreme Court and I don't think it has any relevance here at all.

The fact is that Mr. Bollo resigned and since then the salary has not been paid. These other matters are subject of consideration in the State Court action.

6 McDowell - cross

MR. BLUMSTEIN: Your Honor, it has to do with a defense we have tendered in this lawsuit concerning the length of time it took plaintiff to bring this lawsuit after discovery of the alleged fraud here.

I think that -- I plan to ask no more questions in this respect, except to have Mr. McDowell tell me what the reason was and then I'll drop the subject.

MR. WILLIAMS: I object to the reason. I don't mind the date. I think that date is important, or could be important, and the reason why he was discontinued goes into questions which are pertinent in the State Court action, and I don't think we should go into them here.

MR. BLUMSTEIN: Your Honor, I think that if Mr. Bollo had an employment agreement and that if Standard was continuing to pay him his salary under that employment agreemnt for a considerable period of time after they allegedly learned of the facts which are now the heart of their fraud action here, I think it has some bearing on their conduct in this case.

That's all I'm trying to establish.

MR. WILLIAMS: He might have continued his salary for a lot of reasons, including the fact he had a contract.

MR. BLUMSTEIN: I don't think, your Honor, we want to get into this here.

THE COURT: What would be the relevance of the discontinuance of salary here?

MR. BLUMSTEIN: Well --

THE COURT: The issues here.

MR. BLUMSTEIN: What I am trying to establish is --

THE COURT: You seem to say -- you seem to think that the timing is significant. It escapes me.

MR. BLUMSTEIN: I am trying to determine the length of time that Pittsburgh Coke or Standard continued to honor its contractual obligations with Mr. Bollo.

THE COURT: Let me say this: Apparently your probings of this witness's recollection ~~hasn't~~ haven't been productive but I think that would be a matter of record, would it not? That is to say, if Mr. Bollo's salary was continued for a period of time, that would be reflected in company records.

MR. WILLIAMS: Yes. I have no objection to

the dates at all.

MR. BLUMSTEIN: Fine.

MR. WILLIAMS: The reasons are something else.

THE COURT: That is to say, it would be up to a certain point and I suppose we would then draw the conclusion that after that it ceased.

MR. BLUMSTEIN: I've been advised that the date is February of 1971, sometime in February of 1971.

MR. WILLIAMS: Would that be right, 1971?

MR. FOSTER: That's roughly true. I don't know exactly.

THE COURT: Are you content with counsel's assurance or do you want some specific record indication of it?

MR. WILLIAMS: Your Honor, we can augment the record later when we find out.

MR. BLUMSTEIN: Fine.

THE COURT: Obviously this witness doesn't seem to know the exact adate.

BY MR. BLUMSTEIN:

Q Mr. McDowell, apart from Mr. Bonar, are you aware of any other representatives of First Grant or Pittsburgh Coke going to the premises of Standard Aircraft?

A Yes. I believe that representatives of our accounting department made one or more visits to Standard and I assume you're again talking about the period prior to the closing.

Q That's correct.

A In order to become familiar with the personnel of the company and the accounting, looking forward to the time when we would have to meld the accounting of what would become a subsidiary with our company.

Q Do you know a gentleman by the name of Mr. Stoll?

A I do.

THE COURT: Just one thing.

Did I understand you to say, before the closing or immediately after?

THE WITNESS: I believe such a visit was made before the closing, in anticipation of the accounting problems that would occur because of our being an investment holding company and so on.

(Continued on next page.)

Q Mr. Stoll was someone from your accounting department?

A That's right.

Q Would you identify him for us, please?

A He was either Assistant Comptroller or Comptroller of Pittsburgh Coke & Chemical at that time.

Q Do you happen to know how many trips he made?

A I don't.

Q What about Mr. Housley? Can you identify him for us?

A I couldn't hear you.

Q Mr. Housley.

A He was also a member of the Financial Department of Pittsburgh Coke & Chemical Company at that time.

Q Do you know whether he made any trips to Standard?

A I don't know. I recall a note or something that indicated that Stoll had been there and others. It would be logical that Housley would be in that group, but I don't have a specific recollection.

Q By the way, Mr. W.G. Rduck, R-d-u-c-k-, do you know him?

A Yes, I do.

Q He is a lawyer?

A That's correct.

Q Mr. John Adams, not the president, but someone connected with Pittsburgh Coke?

A What's your question?

Q Do you know a Mr. John Adams?

A I do.

Q What was his position at Pittsburgh Coke at the time?

A He was the head of the Financial Department of Pittsburgh Coke. I don't remember the exact title that was used at that time.

Q Was he involved in any extent with the transactions concerning Standard?

A What transactions do you have in mind?

Q Was he consulted in connection with any of the problems that may have arisen between the date of the contract and the date of the closing, financial problems, investigation of standard accounting procedures, etc.?

A The people that we have identified previously as having made visits to Standard reported to Mr. Adams.

Q I see. One more: Fred Kirby, do you know him?

A I do.

Q Could you tell us who he is?

A Fred Kirby was, at the time we are discussing,

also an assistant for planning control to me, and he succeeded Mr. Bonar in that respect.

Q When did that succession take place, was it at or about the time of the closing?

A No, I believe it would have been later than that. There was an overlap, both men worked for me simultaneously for a period of time, and Bonar, I would have to guess, left in the latter part of '70 or the early part of '71 -- but that is a guess. I'd have to check the record on that.

Q After Mr. Bonar left, Mr. Kirby in effect became your eyes and ears at Standard; is that true?

A That's right.

Q And I take it he made a number of trips to Standard?

A He did.

Q And he made a number of reports to you?

A Yes, he did.

Q When did you -- when I say "you" I mean Mr. McDowell and not Pittsburgh Coke -- first become aware of any deterioriation in the relationship between Standard and Whittaker Corporation?

A About, I think, August of 1970, or in that general period.

Q Was there any particular fact that brought this

deteriorating relationship to your attention?

A I believe that my first knowledge of what you call a deteriorating relationship was notice that they had cancelled us as a distributor.

Q I see. What about the deteriorating relationships with divisions of the Bendix Corporation, in particular, navigation & control. When did you first become aware of that deterioration?

A Again, it was a cancellation as against a deterioration, and I believe that I learned of that after the Whittaker situation, but I can't be a hundred per cent certain of that.

It was in that same general time period, and in the case of Bendix, either Lou or Jerry Bollo, I believe, called me and told me there had been a cancellation.

MR. BLUMSTEIN: I ask the Clerk to mark it, please.

THE CLERK: One-page document marked for identification as Defendant's Exhibit B.

(So marked.)

BY MR. BLUMSTEIN:

Q Let me show you Defendant's Exhibit B and ask you if you can identify it for me, please?

A I recognize this.

Q Can you tell me what it is, please?

A It is a wire, Telex from Lou Bollo to me, dated -- I'm sorry, I can't read the date on there.

Q I think it is August 1.

A It is August 1, but I can't see the year.

Q Would you look at the lower left-hand corner, you see the date 8/4/69?

A Oh, yes.

Q So it's probably received August 1, '69.

A Right. It is a wire that informs me that Standard has received a contract from Eastern Airlines on Bendix wheel and brake requirements.

Q There are some handwritten notations on that telegram. Are those yours?

A Yes, they are.

Q They are in your handwriting?

A Yes.

MR. BLUMSTEIN: I will offer it in evidence, your Honor.

MR. WILLIAMS: No objection.

THE CLERK: Defendant's Exhibit B now marked in evidence.

(So marked.)

MR. BLUMSTEIN: Your Honor, I would have another copy

for the Court, except the xeroxing broke down. Can we supply you with one tomorrow?

THE COURT: That's all right.

MR. BLUMSTEIN: Thank you. May I have this marked, please?

THE CLERK: A one-page document marked for identification as Defendant's Exhibit C.

(So marked.)

BY MR. BLUMSTEIN:

Q Let me show you Defendant's Exhibit C and ask you if you can identify the document?

A Yes. This is a short memo which I wrote and addressed to some of my associates in Pittsburgh Coke, in which I stated that Lou Bollo has advised us today on August 5, 1969, that in addition to the Eastern wheel and brake business on 747's -- excuse me, not on 747's -- in addition to Eastern's business, which I believe was what was referred to in the previous exhibit --

Q Correct.

A -- Standard Aircraft has been awarded United 747 wheel and brake business.

And I indicate an annual sales volume of a possible million five hundred thousand.

Q Could you for the record identify the initials on

the top of the memo and the persons to whom this memo was directed?

A Yes. This went to Messrs. Hillman, Rauck, John Adams, Johnston and Bonar.

MR. BLUMSTEIN: I will offer it in evidence.

MR. WILLIAMS: No objection.

THE CLERK: Derendant Exhibit C now marked in evidence, dated August 5, 1969.

(So marked.)

MR. BLUMSTEIN: Could I have this marked, please?

THE CLERK: Two-page document marked for identification as Defendant's Exhibit D.

(So marked.)

BY MR. BLUMSTEIN:

Q Let me show you Defendant's Exhibit D and ask you to identify that, please.

It is a letter from you; is that correct, it is the original of a letter from you addressed to Mr. Bollo, dated September 5, 1969?

A That's right.

Q In subject matter, it concerns a visit by Rod Bonar to Standard on Wednesday, September 10th to review preliminary sales and earnings forecasts; is that correct?

A That's correct.

Q Then you outlined three areas in which you are particularly interested; is that correct?

A Yes.

MR. BLUMSTEIN: I will offer it in evidence.

MR. WILLIAMS: No objection.

THE CLERK: Defendant's Exhibit E now marked in evidence.

(So marked.)

BY MR. BLUMSTEIN:

Q Let me ask you this, Mr. McDowell, during your visits to Standard and during your discussions with Mr. Bollo, did he ever refuse to answer any question you might put to him?

A He did not.

Q Let me ask you this: Did you ever request any documents from him?

A Yes.

Q And did he ever fail to disclose to you any document or to deliver to you any document that had been requested?

A There were occasions when we had some difficulty in getting documents on a timely basis.

Q When were those occasions, before or after September 18, 1969?

A After that date.

Q Did anyone at First Grant or Pittsburgh Coke ever report to you that they had visited Standard and had not been able to have their questions answered? Did you ever receive any such report?

A Are you asking again about the period prior to the closing or --

Q Yes, sir.

A None prior to the closing day.

Q And, finally, did you ever get any report that a document of any kind had been requested and had been refused by anyone at Standard, again, prior to September 18, 1969?

A I did not.

Q I have just one or two more questions.

Do you recall in 1970, without getting into any of the details, that Mr. Bollo, on behalf of Standard, requested Pittsburgh Coke to provide some financing for information purposes in connection with the project, a European project he had?

A Yes, I do.

Q Do you recall denying that request?

A Yes, I do.

Q Now was one of the reasons why you denied that request that the most severe credit crunch of a generation was taking place in 1970?

A I am sure I said something along those lines.

MR. BLUMSTEIN: I have no further questions, your Honor.

(continued next page)

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q Did you see any of the distributorship contracts before the closing?

A I did not.

Q Did you or anyone in First Grant Corporation see any of the distributorship contracts before the closing?

A I do not know of anyone other than myself, or in addition to myself, who saw them.

Q Would it have been normal for you to ask to see the hundred or so distributorship contracts?

A I would not have thought so.

Q Do you happen to know whether the cancellation clause is common to most distributorship contracts?

A I believe it is.

Q At the time of the closing when you retained Lou Bollo as President of the company, and agreed to pay him this large sum of money as compensation, did you have absolute confidence in him?

A Yes, I did.

MR. BLUMSTEIN: I will object to the form of the question, your Honor.

THE COURT: "Large sum of money," or the leading nature of the question?

MR. BLUMSTEIN: Both.

MR. WILLIAMS: This is in reply to -- specifically in reply to your question.

THE COURT: I understand.

MR. WILLIAMS: I will withdraw my question.

THE COURT: You may answer if you recall the question.

A I did have complete confidence in Mr. Bollo.

Q At the time did you know of the r uction in the discounts that Bendix was giving you?

A I did not.

Q Or that Whittaker was giving?

A I did not.

Q Did you know that Whittaker had already notified Mr. Bollo of the prospective cut-off of all business on the wide body jets?

A No, sir, I did not.

Q Did you know at the time of the closing that Mr. Bollo did not follow a policy, consistent policy, of writing off inventory after two years?

A I did not know that.

Q Were you under the impression that inventory or dead stock was written off every two years?

A I was.

Q Did you know that in eight years inventory had only been written off in four of those years?

A No, sir, I did not.

MR. WILLIAMS: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. BLUMSTEIN:

Q Mr. Williams mentioned just a minute ago whether you knew that the Whittaker discount rate had been cut. Is that correct, you remember your saying you didn't know that?

A Yes.

Q In fact, there never was any cut in the Whittaker discount rate, was there, that you are aware of?

A You're correct. But I was not aware of any such cut. That is an accurate answer to the question.

Q Because there was no such cut?

A I think you are correct on that.

MR. WILLIAMS: I think I misspoke.

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q You were not aware, were you, of any prospective-- I withdraw that. You were not aware that Standard had already received a notification from Whittaker of a cut-off of all the business on 747s and the wide-bodied aircraft?

A That's correct, I was not aware of it.

MR. WILLIAMS: I have no further questions, your Honor.

MR. BLUMSTEIN: No further questions.

THE COURT: All right. You may step down, Mr. McDowell.

(Witness excused.)

MR. WILLIAMS: I am prepared with another witness, your Honor, maybe a shorter one, I don't know.

THE COURT: Why don't we go ahead.

MR. WILLIAMS: Most of these men are out of town witnesses so I am trying to hurry them through.

THE COURT: Unfortunately for all concerned, I will have to cut you off at 4 o'clock because I have another matter wholly unscheduled at the time that this was arranged, but which is of such urgency, since it is an approval of a stockholders settlement where all notices had to go out months in advance; I have to deal with that at 4.

What shall we do, proceed here until, say, at about 12:45 and resume at 2, or do you think you will need a little more time than that?

MR. WILLIAMS: I think that is fine.

MR. BLUMSTEIN: Fine by me, your Honor.

MR. WILLIAMS: My partner, Mr. Abrams, will call the next witness and examine him, if you please.

MR. ABRAMS: Mr. Johnston.

R I C H A R D M . J O H N S T O N , called as a witness, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR.ABRAMS:

Q Mr. Johnston, what is your home address?

A 128 Wilmar, W-i-l-m-a-r Drive.

Q What city?

A Pittsburgh, Pennsylvania.

Q Will you please state your education.

A I have a Bachelor Science in Commerce, Washington & Lee University; Masters of Business Administration from the Wharton School of Finance & Commerce, University of Pennsylvania.

Q By whom are you currently employed?

A The Hillman Company.

Q How long have you been employed by the Hillman Company?

A I have been employed by the Hillman Company in one of its subsidiaries from November 1971.

Q Which subsidiary did you just make reference

to?

A Pittsburgh Coke & Chemical Company.

Q What employment have you had with Pittsburgh Coke?

A I was Assistant to the President from approximately June 1, 1967 to May 31, 1970.

Q What did you do in your capacity as Assistant to the President of Pittsburgh Coke?

A Primarily, my functions were involved in acquisition and private placement, search and financing.

Q When did you first come in contact with Standard Aircraft?

A In March of 1957 -- excuse me, 1967.

Q How did you hear of Standard Aircraft in March of 1967?

A I heard of Standard Aircraft through Mr. Orrin Leach, a partner in Esterbrook and Company, a Wall Street investment company.

Q What did you hear from Mr. Leach?

A Mr. Leach informed me that there was a possible private placement of common stock of Standard Aircraft Equipment; that he was a Director of the company and was attempting to negotiate such an additional capital input to this company.

Q Did the First Grant Corporation make a purchase of common stock of Standard in 1967?

A In June of 1967.

Q Do you recall what percentage of the shares of Standard were acquired?

A Both open market purchases and the take-down of the private placement stock totalled approximately 24 percent of the then outstanding shares.

Q How much was paid per share?

A Seven dollars per share.

Q What did you do personally with respect to that purchase in 1967?

A I had conversations firstly with Mr. Leach. I made an investigation of some financial data which Mr. Leach provided me from Standard Aircraft Equipment.

I made comparisons with other companies in the field. I had a visit to Standard Aircraft Equipment at Garden City, Long Island with Mr. Bollo for the purpose of discussing the business.

I had telephone conversations with Mr. Bollo and also conversations with my associates preparatory to an agreement to acquire the stock.

Q Were you involved in the negotiations which ultimately led to the purchase in 1968 of any more stock of Standard Aircraft?

A Yes, I was.

Q In what capacity were you so involved?

A I had conversations again with Mr. Leach, visits with Mr. Bollo, additional telephone calls with him and meetings with my own associates in Pittsburgh and I attended a negotiating meeting with Mr. Bollo and Mr. Hillman at the St. Regis Hotel in New York City for the purpose of establishing a price for this acquisition.

Q Can you tell us when the meetings were held in 1968 to which you just made reference?

A Yes. I believe that my meeting with Mr. Bollo was in September of 1968 and the meeting at the hotel was in October of 1968.

Q Did the subject of suppliers of Standard Aircraft come up at the September 1968 meeting?

A Yes.

Q Can you tell us what Mr. Bollo said to you, if anything, about the suppliers of Standard?

A Well, No. 1, there were considerable numbers of suppliers, and we only discussed suppliers that were of major extent to the company.

We were particularly concerned about the rapid build-up in the business of Standard Aircraft with these particular suppliers, which was occasioned by the introduction

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of jet aircraft in the commercial aviation market and also to burgeoning sales in the general and corporate aviation markets.

Q Did Mr. Bollo discuss any specific suppliers with you by name?

A Yes, he did.

Q Did he mention the Whittaker Company?

A Yes, he did.

Q Can you tell us to the best of your recollection what he said at the September meeting about Whittaker?

A The Whittaker Company's products represented the largest single product category, which I believe he indicated to me at that time totalled 1.8 million dollars in sales annually.

He also indicated that as additional aircraft were put in service by commercial airlines, the extent of the business that Standard was enjoying with Whittaker would grow and was also to be growing because of the size of this material in connection with wide-bodied jets.

Q Can you tell us again what the wide-bodied jets are.

A Yes, they refer to -- they referred to at that time three particular aircraft models, known as the Boeing 747, the Douglas DC 10 and the Lockheed 1011.

DIRECT EXAMINATION

BY MR. ABRAMS (Cont'd):

Q Did you make a memorandum with respect to your meeting in September, 1968, with Mr. Bollo?

A Yes, I did.

MR. ABRAMS: I'd like to have this marked for Identification as Plaintiff's Exhibit 10.

THE CLERK: Yes. A two-page document marked for identification as Plaintiff's Exhibit No. 10.

(So marked.)

Q Can you identify the document that I have just handed to you, Mr. Johnston, and had marked as Plaintiff's Exhibit 10 for Identification?

A I identify this as my handwriting.

Q When did you prepare this memorandum?

A I had a meeting with Mr. Bollo and Mr. Leach on September 25th. I prepared the memo on September 26th and 27th.

Q Why did you prepare it?

A In the normal course of my activities, I usually commit to paper the notes of my meetings with various company people with which I am in contact.

Q Is that why this particular document was prepared?

A Yes, it was.

MR. ABRAMS: I would seek the admission of this document, your Honor.

MR. BLUMSTEIN: No objection.

THE COURT: No objection. All right.

THE CLERK: May I have that document so I can mark it?

Plaintiff's Exhibit No. 10 now marked in evidence.

(So marked.)

BY MR. ABRAMS:

Q Did Mr. Bollo tell you at any time prior to the signing of the contract on December 20, 1968, that he had seen any internal memoranda of Whittaker with respect to the possible termination of Standard as a distributor of Whittaker?

A No, sir.

Q Mr. Bollo tell you at any time prior to the signing of the contract that the Standard distributorship with Whittaker had ever been cancelled?

A No, he did not. That would be quite a statement to me, if it had been made.

Q Was the relationship between Standard and Whittaker one of importance to you prior to the signing of

2 Johnston - direct

the contract?

A Yes, it was. As I indicated a moment ago, this was the largest single product that the company had. It had enjoyed very significant advances in sales. They had an exclusive distributorship arrangement with Whittaker.

This was a product that was going to be -- well, it was a product thatwas going to be utilized on wide-bodied jet aircraft. It was a product that was already on the first generation jet which were being produced and for which there were significant orders.

It was one of the reasons, as I understand it, among others, that the company chose in the late 1960's to expand the number of stores to include locations that were adjacent or nearby major overhaul facilities of commercial airlines, so that Whittaker controls, among other products, would have timely access to the maintenance facilities of these airlines.

Q Did Mr. Bollo tell you at any time prior to the closing on September 18, 1969, that any of the information he had given you in the September 25, 1968 meeting was incorrect?

A No.

Q Did Mr. Bollo tell you at any time prior to the closing that any new facts had arisen which led information he had previously given you to become inaccurate?

A No, sir.

Q Did Mr. Bollo tell you at any time prior to the closing that Whittaker had advised Standard that Standard would not be getting any 747, DC-10, or L-1011 business?

A No, sir.

Q In the September 27, 1968, meeting, can you tell us what Mr. Bollo had to say about the relationship between Standard and Bendix?

A Standard enjoyed a longstanding relationship with a number of Bendix Corporation's divisions, to supply a variety of products, to commercial and general aviation users.

Again, Mr. Bollo and I talked at considerable length, at more than one meeting, about the advent of the additional jet aircraft that were being put into service, that Bendix equipment was going to be loaded on this ~~equipment~~ aircraft and that it would be the source of considerable growth to Standard and this led to further discussions between the two of us concerning the problems of financing the working capital to carry the -- this business activity.

Q At any time prior to the date the contract was entered into, did Mr. Bollo say anything to you with respect to the reduction in the discount rate of Bendix's navigation and control division in April, 1968?

A No, he did not.

Q Did he show you any correspondence between Bendix Navigation & Control and Standard?

A No.

Q Reducing the discount rate?

A No, he did not.

Q Did he tell you of any reductions in the discount rate of Bendix Engineering Control Division?

A No, he did not.

Q Was the amount of the discount rate of relevance to you?

A Very definitely. The amount of discount determines the profitability of the product line and a reduction in that discount rate would have impaired the profitability and would have been particularly burdensome to Standard Aircraft in the method of expanding the number of stores and having taken on additional lease commitments for store locations and personnel for managing these stores, all with a view toward having these products move through them.

Q Did you participate in the decision as to how much to pay Mr. Bollo for the Standard stock?

MR. BLUMSTEIN: Which contract?

MR. ABRAMS? I'm sorry. Of -- the 1968 contract.

THE WITNESS: Yes.

BY MR. ABRAMS:

Q Were you a participant in that decision?

A Yes, I was.

Q Was the growth rate of Standard relevant to your decision?

A Well, it was of considerable relevancy because the price that was paid for the stock at that time was a significant premium over the price that we had paid for our original block of stock. It represented a significant premium in relationship to the earnings of companys in general and it was based in large measure upon the fact that the company had enjoyed 10 consecutive years of sales growth and a considerable increase in earnings during the last seven or eight years, up to that point in time.

Q I think you testified at the start of your testimony that you had particpated in other acquisitions of Pittsburgh Coke; is that correct?

A A number, yes.

Q Were any of those acquisitions made for at or about book value?

A Oh, yes. A number of them were.

Q Can you identify any for us?

A Yes. In 1965, I believe, in December, 1965,

we acquired the S. S. La Marion Power Shovel Division at book value.

Q Did you plan to liquidate that company when you purchased it?

A Oh, my, no. We bought it to run as a going concern.

Q Go on. Were there any others?

A We purchased a concrete pipe company at approximately book value, which, as Marion, is still a wholly-owned subsidiary of our company.

Q Did you plan to liquidate that company when you purchased it?

A No. It was planned to be run as an operating subsidiary of Pittsburgh Coke & Chemical. We purchased -- we have purchased five air-conditioning and commercial refrigeration wholesalers for book value.

Again, they were purchased as operating businesses and continued to be operated as wholly-owned subsidiaries.

MR. ABRAMS: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. BLUMSTEIN:

Q Mr. Johnston, I think you referred to some open market purchases which you had made the stock of

Standard in 1967; is that correct?

A That's correct.

Q Where was the stock of Standard selling, what market?

A I believe the price was between five and a half and six and a half dollars a share.

Q I'm sorry. My question was, it wasn't a listed company? It wasn't selling on the stock exchange? It was over-the-counter, wasn't it?

A That's right.

Q And that acquisition was made, to the best of your recollection, before or after you signed -- when I say "you," I mean, First Grant Corporation, signed an agreement with Mr. Bollo and Standard to acquire shares from those two sources?

A I believe it was.

Q Before?

A That's correct.

Q Do you have any recollection of how much before?

A I would say, within a month or two prior to that time. I had my meeting with Mr. Bollo in March and the deal was concluded in June 1967. It would have been in probably May, perhaps the early part of June.

Q But it was before the deal was concluded?

A That's right.

Q I think you said you thought the price was between six and a half and seven and a half?

A I think. It's somewhere -- somewhere in that range.

Q Now, I think you said that after your contact with Mr. Leach, you made some comparisons or did some investigation of other companies in this business, that is, the parts, aviation parts business; is that correct?

A That's correct.

Q Do you recall the names of the companies?

A Yes. Van Dusen, Southwest Air Motive, Pacific Air Motive, Air Work.

Q And what was the reason for making such an investigation?

A The principal reason was to ascertain through publicly available information the growth in earnings and sales of these companies in comparison to Standard Aircraft Equipment. Also, to note the location of their outlets relative to Standard Aircraft and other information.

Q These were companies that had securities which were publicly traded?

A Yes.

CROSS-EXAMINATION

BY MR. BLUMSTEIN: (Cont'd.)

Q Did you perchance look at the price at which those securities were selling?

A I did at that time. Q did you compute the relationship between the price at which they were selling and the earnings as recorded in the published information?

A I don't recall whether I did or not.

Q But you wouldn't -- you wouldn't be surprised if you had?

A Wouldn't be surprising, no.

Q You say that, in connection with this first purchase before you met with Mr. Leach, you had visits with Mr. Bollo and you also discussed it with some of your associates in Pittsburgh. Can you tell me the names of those associates, please?

A Mr. Hillman and Mr. Binker.

Q That's Mr. Henry Hillman?

A Yes, it is.

Q And what was his position with the company?

A President.

Q President of the Hillman Company?

A President of Pittsburgh & Chemical Company.

Q And Mr. Binker at that time?

A Was the president of First Grant Corporation.

Q And was it as a result of these various discussions that you came to the conclusion that you would pay $7 per share to Standard and Bollo for their shares?

A That's correct.

Q Now, you mentioned a negotiating session between Mr. Hillman -- again that is Henry Hillman -- and Mr. Bollo in October of 1968 at the St. Regis?

A That's correct.

Q Will you tell me, sir, what transpired at that meeting?

A Principally a discussion between Mr. Hillman and Mr. Bollo of the relative merits of acquiring the additional stock interest in Standard Aircraft and the price at which that interest was to be acquired.

Q Do you recall what price Mr. Bollo was requesting?

A $16, I believe. Per share.

Q And do you know what price Mr. Hillman was offering?

A I don't recall a single number. There were several side-bar meetings, so to speak. But Mr. Hillman was offering something less than $16. Or bidding something less than $16 at that time.

Q When you say side-bar meetings, you mean

conferences amongst perhaps you and Mr. Hillman and --

A That's correct.

Q To see what you should do? By the way, was Mr. Bollo -- any other representative of Standard there beside Mr. Bollo?

A Not at that time. Virtually all of my contact -- every meeting was with Mr. Bollo and Mr. Bollo alone.

Q How were things left at the end of that meeting?

A I believe there was a handshake agreement at that meeting.

Q You believe there was a handshake agreement at that meeting?

A Yes. Between Mr. Hillman and Mr. Bollo.

Q At the price of?

A $16 per share.

Q You don't -- well, let me ask you this. What is your best recollection as to how much below $16 Mr. Hillman was trying to get the shares for? 10 per cent, 20 per cent?

A Perhaps something in that range. At the most.

Q Now, let me ask you this. You have spoken about the Whittaker Corporation and its significance with

respect to the business of Standard. During the course of any of your discussion with Mr. Bollo, did you ever ask to see the written agreement between Whittaker and Standard relating to the distributorship?

A No, I did not.

Q Did you ever ask Mr. Bollo any questions about the contents of such an agreement?

A I don't recall.

Q Did you ever ask him any questions about what the term of the agreement might be?

A I may have.

Q Do you recall what he told you?

A I do not.

Q Is this because -- I'll withdraw that. I think you used the word in your direct testimony and I think it appears in your memorandum which is marked Plaintiff's Exhibit 10, that Standard has "exclusive" distributorship arrangement with Whittaker. Is that correct?

A That's what I was informed.

Q And it was Mr. Bollo who informed you of that fact?

A Once again, almost every word I ever had with Standard Aircraft was with Mr. Bollo.

Q Did you ever send Mr. Bollo a copy of this

memorandum of yours dated December 27, 1968?

MR. ABRAMS: September?

MR. BLUMSTEIN: Plaintiff's Exhibit --

THE COURT: 10.

MR. BLUMSTEIN: 10.

MR. ABRAMS: September.

MR. BLUMSTEIN: I am sorry. September 27, 1968.

A I don't recall whether I sent him a copy.

Q So if there was anything in this memorandum which you perhaps had, by inadvertent mistake, incorrectly recorded as a fact which in fact was not a fact, he would not have had the opportunity to correct you by having seen a copy of this memo?

A That's correct.

Q Now, you say here that Standard remains the exclusive distributor of Whittaker. Have you got a copy of it in front of you?

A Right here.

Q I'm looking at the last line. It is your best recollection that that was told to you by Mr. Bollo, is that correct?

A Yes.

Q And someplace in the middle of that paragraph

there is a sentence which reads, "Standard has been assigned as the fourth distributor for General Aviation Radios manufactured by Bendix."

Is it your best recollection that that is what Mr Boll told you?

A That's where it came from.

Q And that is where all of the information in this memorandum came from?

A All of the information.

Q By the way, these companies you mentioned that were acquired for book value, Marion Power, Concrete Pipe and these air-conditioning wholesalers, did you, in connection with those acquisitions, make any analysis of the business of those companies?

A Yes.

Q And what was the purpose of making --

A Some.

Q Some?

A Yes.

Q Well, let's talk about the some that you did. What was the purpose of making that analysis?

A The purpose of the analysis was once again to make comparisons of the company relative to other companies in its field or to companies in general, to also obtain

historical perspective on the company in question. To provide documentation for my associates when they were discussing the situation.

Q You examined, I take it, the earnings prospects of those companies?

A Yes.

Q In your discussions with Mr. Bollo, the ones that you had prior to the December, 1968 agreement, did the subject of inventory ever come up?

A Yes, it did.

Q And can you tell me as best you recall it, what Mr. Bollo said on that subject?

A I believe I asked a question of Mr. Bollo in 1967 concerning his inventory write-off policies and I obtained an answer at that time. I don't recall what it was. Our principal conversations thereafter related to the problems of financing inventory and the questions of how fast the inventory was -- was growing and what were going to be the alternative needs that could be considered in addition to the equity take down that we were involved in for financing this inventory buildup.

Q You say you think that in 1967 you asked him what the inventory write-off policy was?

A Yes.

Q And he answered that question?

A I don't know. He answered it and I don't recall what he said.

Q No recollection whatsoever?

A No.

Q Make any notes is that meeting?

A I have some notes of that meeting, I believe.

Q Do you have them with you right now?

A I may.

Q Would you check, please, during the luncheon break and see if you have those notes?

A Okay.

Q And then could you make them available to me before we start the afternoon session?

THE COURT: Are you suggesting you've arrived at the right point?

MR. BLUMSTEIN: This might be just precisely the right point, your Honor.

THE COURT: All right.

MR. BLUMSTEIN: I'll be finished with this witness very quickly after lunch.

THE COURT: Yes. I understand. In other words, you are not going to finish until you get --

MR. BLUMSTEIN: I'd like to see the notes and

I may have one or two more questions.

THE COURT: All right. We will recess until 2 p.m.

(Luncheon recess taken)

(Continued on next page.)

hb

1 AFTERNOON SESSION 109

RICHARD M. JOHNSTON, resumed and testified further as follows:

MR. BLUMSTEIN: May I proceed?

THE COURT: You may proceed.

MR. BLUMSTEIN: May I have this marked for Identification.

THE CLERK: Three-page document marked for Identification as Defendant's Exhibit E.

(So marked.)

CROSS-EXAMINATION

BY MR. BLUMSTEIN:

Q Mr. Johnston, just before lunch I was handed this three-page document which is headed Standard Aircraft Equipment Company, Inc. I would like to show it to you and ask you if you can identify it, please.

A Yes, I can identify it.

Q Would you tell me what it is, sir.

A My notes relative to a meeting I had with Mr. Bollo in, I believe, it was March of 1967.

Q Is that possibly the meeting where you may have asked him about inventorywrite-off policy?

A I believe I asked him that question at that meeting.

Q Have you had a chance to look at that document?

A I have looked at the document, yes.

Q Is there anything in there about inventory write-off policy?

There is not.

MR. BLUMSTEIN: I would like to offer this document in evidence.

MR. ABRAMS: I have no objection, your Honor.

THE COURT: Mark it in evidence.

THE CLERK: Defendant Exhibit E now marked in Evidence.

(So marked.)

THE CLERK: One-page document marked for Identification as Defendant's Exhibit F.

(So marked.)

Q Mr. Johnston, let me show you a document that has been marked as Defendant's Exhibit F for Identification and ask you if you can identify that document, please.

A Yes, I recognize this document.

Q Can you tell me what it is, sir?

A It is a ratio analysis of certain financial information of Standard Aircraft Equipment, which was prepared by myself in September of 1968.

Q Can you tell me, sir, the purpose for the preparation of this ratio analysis?

A For the information of my associates and myself in preparation for negotiating the acquisition of additional shares of the common stock of Standard Aircraft Equipment.

Q Can you tell me, sir, the kind of information that is set forth on this document, basically, what does it purport to show?

A It purports to show for the period 1961 to 1967 profit margins and various measures of the efficiency with which the company was employing its capital.

Also, it includes such information as the number of stores and the yearly volume per store.

Q You have used the word "stores," are those the branches that Standard had in various places?

A Yes.

Q Those were not stores in the sense of retail operations, were they?

A No, they were not anything to do with retail.

MR. BLUMSTEIN: I offer Defendant's Exhibit F.

MR. ABRAMS: We have no objection.

THE CLERK: Defendant's Exhibit F now marked in Evidence.

(So marked.)

BY MR. BLUMSTEIN:

Q In the course of your various meetings and

discussions with Mr. Bollo, did you ever find him unwilling to answer any question you might ask concerning the business or operations of Standard?

A No. Our meetings were very friendly and very open and I believe all of my questions were answered when I asked them.

Q In connection with any requests you may have made for documents or other written material concerning Standard, were those materials supplied to you?

A I did ask for documentation from time to time, and they were supplied.

MR. BLUMSTEIN: I have no further questions.

Thank you.

REDIRECT EXAMINATION

BY MR. ABRAMS:

Q Mr. Johnston, would it have had an effect on your judgment as to whether to recommend the purchase of Standard Aircraft stock had you been advised prior to the contract date that there would be no Whittaker 747 equipment which Standard would be involved with?

A That would have represented a diminution of the earnings potential of the company; yes, it would have materially affected my judgment.

Q Would it have materially affected your judgment

that there would be no Bendix navigation and control equipment which Standard would be handling with respect to 747s?

A The same answer, it would have affected.

Q Would it have affected your judgment had you been advised prior to the time that the contract was entered into that there had been significant cuts in the discount rates or products of Bendix Energy Control and Navigation & Control?

A Again, that would emasculate the earnings potential of the company and it would have been of material concern.

Q Would it have been of material concern had you been advised at any time prior to closing that Standard had been advised that there would be no Whittaker 747 business at all?

A Yes.

Q Are you in a position to tell us to what degree it would have affected your judgment?

MR. BLUMSTEIN: Your Honor, I am going to object to that question. It is hypothetical. I don't know if this witness is an expert on the judgment. He says would it have affected his judgment.

MR. ABRAMS: I think I am entitled to go in at least so far as the materiality is concerned --

THE COURT: I believe the witness has stated it in terms of a material effect.

I think Mr. Blumstein's objection is to the ability of the witness to state degree or varying degrees.

Perhaps you may inquire in what specific respects his judgment might have been changed, that is, whether the deal would have been abandoned entirely or whether there would have been a renegotiation of the price; maybe that would be material, I don't know.

Q Can you tell us, Mr. Johnston, in what respects it would have affected your judgment?

A Well, I think the loss of earning power from these potentially attractive and substantial business opportunities would have -- could have caused us to re-think the whole idea of buying the additional shares in this company and certainly would have affected the price at which we would have been willing to negotiate with Mr. Bollo.

We were paying a significant premium over the price that had occurred a year before and a high valuation relative to what companies of this type and other companies sell at, and we were doing that in part upon the continuation of the very good record the company had been building up in the years prior to this time.

MR. ABRAMS: I have no further questions, your Honor.

RECROSS EXAMINATION

BY MR. BLUMSTEIN:

Q One question, Mr. Johnston: Based on your participation in the negotiations with Mr. Bollo, particularly that meeting at the St. Regis that we have discussed earlier, do you think that if you had offered Mr. Bollo a price substantially below the $16 price he was asking there was any chance he would have accepted that offer?

A We had offered to purchase the additional shares at prices less than $16 a share. Mr. Bollo kept asking for $16 a share.

Q He was quite firm on that price?

A He was. The market price in the over-the-counter market, such as it was for a rather thin float situation, was at 15 to $16 a share at that time.

MR. BLUMSTEIN: No further questions.

MR. ABRAMS: I have no questions. Thank you, Mr. Johnston.

THE COURT: You may step down.

(Witness excused.)

MR. ABRAMS: Mr. Bonar.

(Continued on next page.)

RODNEY L. BONAR, called as a witness, first being duly sworn, was examined and testified as follows:

MR. WILLIAMS: Your Honor, may I inform the witnesses who testified that they are free to leave?

THE COURT: Of course.

DIRECT EXAMINATION

BY MR. ABRAMS:

Q Mr. Bonar, what is your address?

A 1229 Montclair Drive, Pittsburgh, Pennsylvania.

Q By whom are you employed, Mr. Bonar?

A I am self-employed.

Q Could you please state your education.

A I have a Bachelors of Science in Business Administration from Washington University in St. Louis. I have a Masters in Business Administration from the Harvard Graduate School of Business.

Q How long have you been self-employed, Mr. Bonar?

A Since September 30 of 1970.

Q By whom were you employed prior to the time you became self-employed?

A I was employed by Pittsburgh Coke and Chemical.

Q When were you first employed by Pittsburgh Coke?

A That would have been June of '67.

Q What functions did you perform at Pittsburgh Coke?

A My title was Assistant for Planning and Control, reporting to Putnam McDowell.

I followed whatever directives he had as far as analyzing the profit variables in the various subsidiaries of Pittsburgh Coke for which he had responsibility.

Q Did a time come when you examined the feasibility of Pittsburgh Coke investing in Standard Aircraft?

A Yes.

Q When was that?

A This would have been in the winter of '68 -- excuse me, the fall of '68, somewhere in November, December.

Q At whose request?

A Mr. McDowell's.

Q What were you asked to do, Mr. Bonar?

A Financial analyses that Mr. Johnston had made and had given to Mr. McDowell were then given by Mr. McDowell to me, and I was asked to examine the figures and see if any problems, or red flags, as we call it, showed up, and bring them to his attention.

Q Did you see any problems or red flags?

A No.

Q What did you understand the business of Standard

Aircraft to be in 1968 when you made that study?

A I understood that their business was basically to have the right airplane part at the right location at the right time and the right place, and to sell that part then to whatever customer needed it; basically, an inventory situation.

Q Did you ever visit the premises of Standard Aircraft in Garden City?

A Yes, I did; twice.

Q When was the first time you did that?

A The first time was in July of '69, 1969.

Q At whose request, if anyone's, did you do that?

A Mr. McDowell.

Q What did Mr. McDowell tell you to do or see or think about?

A He asked me to go out there and in the time period of one day to examine the company to determine the critical variables, as we called them, profit variables, to find out what we should be watching or examining as to the profitability of that company.

Q Do you recall to whom you spoke at Standard Aircraft in your visit of July 1969?

A Yes, sir, I do. These people in this order, first of all: Mr. Lou Bollo. After him --

THE COURT: How do you spell that?

THE WITNESS: Bollo.

THE COURT: Oh, Bollo. I'm sorry.

THE WITNESS: Mr. Lou Bollo, first. Mr. Ernie Rusher second. Mr. Lou Bollo again. Mr. Frankowitz after Mr. Bollo. Peter Bollo and then Mr. Lou Bollo again.

Q Did the subject of the inventory write-off policy of Standard Aircraft arise during this visit of yours in July of 1968 to Standard Aircraft?

A Yes, it did.

Q Can you tell us chronologically what you said and what was said to you about that policy of Standard Aircraft.

A My first meeting with Mr. Lou Bollo was strictly a How do you do, I'm Rod Bonar, who should I talk to first? He referred me to Mr. Rusher.

I then went with Mr. Rusher to his office to the area where they kept the data on inventory and went through the mechanics, if you will, some computerized, some not, of how they kept records for their inventory.

After that we went back to Mr. Rusher's office. At that time I said I'd like to now discuss some of your inventory policies with you. He said no, he will not discuss policy with

me.

"I want you to discuss that with Mr. Bollo because I might have it wrong or get you confused with what I say." So he refused to discuss any inventory policy with me.

Q Did you talk to Mr. Bollo then?

A Right, after it was obvious that I had run into a wall here, I asked --

Q What did you say to Mr. Bollo and what did he say to you about the inventory write-off policy?

A We adjourned to Mr. Bollo's office and the first question I had is, "What is your inventory write-off policy?" And his response to me was the response I outlined in a subsequent memo at Pittsburgh Coke & Chemical.

(Continued on next page.)

Q I want to hand you now an exhibit which has been introduced in Evidence as Plaintiff's Exhibit 9 and ask you, first, if this is the document to which you made reference.

A Yes, it is.

Q On the second page of that exhibit there is a paragraph, which is the third paragraph up from the bottom.

A Yes.

Q Which purports to deal with the write-off policy.

Now, first of all, can you tell us without looking at the document what you recall Mr. Bollo said to you about the write-off policy?

A Yes. I asked him what his write-off policy was. He said, "Our policy here is that if we have not had any orders for a part, or any inquiries for a part, for two years, we then write it down to zero. We then keep it for two years on the shelf, and if we still have not had any inquiries or orders, we then donate the part to a subsidiary, Standex, for re-sale in the marketplace.

Q On the second page of Plaintiff's Exhibit 9, third paragraph from the bottom, there is a paragraph which purports to deal with Standard's inventory write-off policy.

Do you know as you sit here today, Mr. Bonar, whether this is what Mr. Bollo, Mr. Louis Bollo said to you?

A Yes.

Q How do you know?

A Well, any time someone enunciates policy when I am doing one of the analyses, I write down word for word what the person says the policy is. I then repeat it back to the person and ask for his agreement.

I did the same here. And in fact, I did it twice. After he told me the policy I read it back to him. He agreed that this in fact was what the policy was.

Later in the day, my last meeting of the day was with Mr. Bollo, who then drove me to the airport. I went over my notes again and every one of the policies narrated here I read back to him from my written notes.

For example, the $4,000 a month, $48,000 a year inventory write-off. I read that back.

The policy I read back and he affirmed that that is what it was.

Q Did you talk to anyone else at Standard Aircraft about what the inventory write-off policy was?

A Yes.

Q To whom did you speak, apart from the people you have told us?

A Peter Bollo.

Q When chronologically did you do that?

A After I finished talking with Lou Bollo about the policies, the various inventory policies, we had lunch; I went and picked an order with Mr. Frankowitz and on the way back with Mr. Frankowitz we had to go by Pete Bollo's office. He was not on my list to see, but I just stuck my head in the door and introduced myself.

He knew who I was and I said, "I understand you are President of Standex. I understand that your inventory policy is that if you don't have inquiries or orders for a part for two years, you then write it to zero; you hold it for two years and then if you still have not had any orders, inquiries, then it is donated to you, your corporation, Standex, for re-~~sell~~ sale. Is that the case?"

And he said, "Yes, it is." And he then proceeded to narrate a recent example of some part that I can't recall now having been given to him, donated vis-à-vis this policy, and he then sold, to, I believe, a Norwegian airline in the re-sale market.

Q Do you know the relationship between Peter Bollo and Louis Bollo?

A I believed then, and I still believe, that ~~it~~ Peter is his son.

Q Did you speak to anyone else at Standard Aircraft, apart from the discussions you have outlined for us already,

with respect to Standard's write-off policy for obsolescent inventory?

A No.

Q Did the subject of Standard's relationship with its suppliers arise at all in the course of your visit in July of 1969 to Standard?

A Yes. As I was talking with Mr. Bollo late in the day --

Q Louis Bollo?

A Yes, Mr. Louis Bollo late in the day, I inquired how the relationships with Bendix were.

Q What did Mr. Bollo say?

A He said they were positive, there was nothing wrong in that area, and responded the same as regards Whittaker.

Q Did you mention Bendix and Whittaker first to him before he mentioned them to you?

A Yes.

Q Why?

A You can't help but mention Bendix. The setting was at that time when you went into Mr. Bollo's office, right above him was a big Bendix plaque with all kinds of letters of appreciation framed.

I had known that Bendix was a very important supplier,

the leading dollar supplier to them, and so you automatically inquire how your biggest supplier is, how your relationships are.

Q Did you ask to see the contracts?

A No.

Q (Continuing) Between Standard and Bendix?

Did you ask to see the contracts between Standard and Whittaker?

A No.

Q Will you tell us why not?

A Because I had understood that they were not significant. By that I mean what is important in that industry, or was at that time, was the personal relationship that the people in Standard would have with the supplier's people, a personal relationship between Lou Bollo, Jerry Bollo and the supplier, and that was what kept Bendix on board, kept Whittaker on board.

MR. ABRAMS: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. BLUMSTEIN:

Q Mr. Bonar, I take it that your charge, so to speak, from Mr. McDowell was to go to Standard and spend one day there and examine into factors, which I think the expression

you used was, profit variables?

A Yes.

Q Could you explain that term for me, please, just what does it mean?

A What things, what occurrences in the company -- what the company does to make a profit; what are the most important things that it accomplishes to make the profit? Identify what they are, first of all.

Q In the case of Standard, what might those factors or things be, based on your knowledge of what the business of Standard was?

A After that meeting?

Q Either before or after. Let's take it before.

A Well, the purpose was to go out there and find out what were the important variables, so I'd have to see after the meeting.

Q So tell me after the meeting what the variables were.

A O.K. After the meeting it was my belief that the important variables were the proper management of inventory and the relationship with the suppliers.

Q When you say, "proper management of inventory," what are the kinds of factors that would go into the proper management of the inventory?

A Well, there are many. First of all, having the right part, again, at the right place physically at the right time that the airline needed it, and at the price that they would pay; those are basically the inventory variables.

Q Is the price a significant factor?

A I think it was a lesser factor.

Q Was it any factor at all?

A Price?

Q Yes.

A I am sure it was.

Q Well, if Standard had a particular price on a product, is it your understanding that another distributor might have a lower price?

A It depended on the part, because I understood that they had exclusives on a lot of them.

Q Such as?

A I understood some of the Bendix parts.

Q Were exclusives?

A Right, at certain physical locations.

Q Was it your understanding that Standard sold these parts to airlines at a different price than what the airline could have obtained from the manufacturer of the product?

A No.

Q Same price?

A I don't know.

Q You don't know?

A Right.

Q Did you make any inquiries on that subject?

A Not that I recall.

Q You said the other important thing was relationships with suppliers; is that correct?

A Yes.

Q Did you during the course of your day at Standard-- what day was it, July --

A What day I was there?

Q Yes.

A July 16, 1969 I believe.

Q July 16, did you make any inquiries concerning the term of any contractual relationships standard might have with its distributors?

A No.

Q You did not?

A I did not.

Q And you learned nothing about that subject on that day?

A Correct.

Q You did not learn, for example, that the contracts

were cancelable, let us say, on 30 days' notice, or something of that sort?

A I did not learn that on that day.

Q Mr. Bonar, you were deposed in this action, were you not?

A Yes.

Q Do you recall your deposition?

A Yes.

Q At that deposition were you asked these questions and did you give these answers, page 46, line 4. Let me start back at page 44, line 23. This is with reference to July 18th:

"Question: Did you have occasion in the course of this visit to Standard to view any contracts with Standard's suppliers?

"Answer: No.

"Question: Did you ask to see any contracts?

"Answer: No.

"Question: Did you ask about the contracts, did you ask what the nature of the contracts was?

"Answer: Yes.

"Question: Did you ask whether they were terminable at the decision of the supplier?

"Answer: Yes.

"Question: And were you answered?

"Answer: Yes.

"Question: What was the answer given?

"Answer: That this was the case.

"Question: Was that so far as you were told true of Bendix Corporation?

"Answer: Yes, we discussed Bendix. I believe I wrote that up in my memo here. No, it is not in this memo, but I know we discussed Bendix. You knew that the contracts were cancelable by them.

"Question: Did you discuss the Whittaker Corporation as well?

"Answer: We may have in passing. I remember the name coming up.

"Question: But you specifically recall discussing the fact that supplier contracts were terminable upon written notice by the supplier, is that right?

"Answer: Yes."

Do you recall being asked those questions and giving those answers?

A Yes.

(Continued on next page.)

Q Those answers were to the best of your knowledge true and correct at the time that you gave them?

A Yes. But --

Q They are true and correct today?

A Yes.

Q So the subject of the cancelability of the contract was discussed on that day?

A In a general way, but not as to specific terms of a specific contract in hand.

Q But you did know on that date, based on the answers that were given to you, that the contracts were terminable at the decision of the supplier?

A Yes.

Q And in your judgment relationships with suppliers was a significant factor that you were looking into during your visit to Standard?

A The personal relationships between the people at Standard and their -- the people at the supplier is what was important, and that is what I inquired on, how are they. I got an affirmative answer.

Q The legal relationships were not important to you, what they might be?

A Not in this industry.

Q Not in this industry?

A That's correct.

Q That was the impression that you had?

A Yes.

Q Where did you get that impression from?

A From the conversations we had, that they would always talk in our relationship is good with them. They didn't say reference, we have a hard and firm contract with these people. It was, "Our relationship is good. It's been positive through the years. We know so and so and so and so."

Q They said that. When "they" say "they," who are you talking about? Mr. Bollo?

A Mr. Bollo is the one that had the relationship.

Q He said that about the suppliers you asked him about?

A He said that the relationship was important, yes.

Q Did he say the relationship was good?

A Yes; with Bendix.

Q Bendix?

A Yes, and Whittaker.

Q And Whittaker?

A Yes.

Q You recall him specifically saying that about Whittaker?

A Yes, positive. It was a positive response.

Q Now, would you look at the document you have in front of you.

A Right.

Q I don't know what the exhibit number is. 9. Is there any reference in that memo to the fact that you learned concerning the ability of the supplier to cancel the distributorship contracts?

A No, there is not.

Q Is there anything in that memo concerning the fact that you've testified to today, that personal relationships were the important thing?

A No.

Q Is there anything at all in the memo about supplier relationships?

A No.

Q Was it your intention when you prepared this memo to have it be a full and complete report of the important factors that you had learned during your trip to Standard on that day?

A My intention in writing this report --

Q Would you please answer my question? Was it your intention --

MR. ABRAMS: Your Honor, the witness is in the

midst of answering it and counsel is interrupting. I think he's entitled to finish the answer.

MR. BLUMSTEIN: If the witness cannot answer the question yes or no, fine; but I'd like to know if I can get a yes or no answer, please.

THE COURT: All right. Try again.

MR. BLUMSTEIN: All right.

Q Was it your intention in writing this memo to include within it all of the important facts concerning profit variables that you had ascertained during your visit to Standard?

A All the new facts.

Q All the new facts?

A Or problem areas.

Q The first page of this memo, rather, the cover sheet of it -- have you got the cover sheet?

A Yes, I do.

Q I see the initials P.B.M. I assume that's Mr. McDowell.

A Yes.

Q And your initials are at the bottom?

A Yes, sir.

Q And J.E.S., who is that?

A That is Mr. Jim Stoll.

Q And G.E.M.?

A That is Mr. George Mellgard.

Q That's a new one in this record. Could you identify him, please.

A O.K. Mr. Mellgard was then and still is an employee of Pittsburgh Coke & Chemical, principally in charge of the personnel functions and operations.

Q That little cover sheet does not have a date on it?

A Correct.

Q And the memo itself does not have a date?

A That's correct.

Q When did you prepare the memorandum with reference to your trip?

A The day after I got back. I got back that evening. The next morning I wrote it out in longhand. The next day my secretary typed it and then it was on Mr. McDowell's desk and the others annotated here the following day, when they got it.

Q And the handwritten draft that was typed up was based on the notes that you had made while you were at Standard?

A Yes.

Q Am I correct that the impression you formed about the significance of personal relationships with

suppliers as being a key factor in the relationship was an impression you obtained during the course of your visit on July 18?

A I had gone out there with the understanding that this was the case and it was affirmed to me.

Q I see. Where did you get that understanding from?

A I can't recall specifically. It was probably --

Q Excuse me. Finish.

A It was probably in the various and sundry discussions during the acquisition phase.

Q Discussions with whom?

A Mr. McDowell, Mr. Johnston. I can't recall specifically.

Q What happened to the handwritten notes after you prepared the draft of them?

A I have no idea. I don't have them.

Q Well, I understand. You have your -- your notes that you make during the trip and then you put them in memorandum form. What is your practice with respect to the notes from which you prepare the memorandum?

A Often they were filed, but not always, and I can't say specifically what happened to these handwritten notes.

Q You have not seen them since the time that --

A No.

Q This memo was sent to Mr. McDowell. Did you thereafter have any discussions with him concerning the contents of the memo?

A Not that I recall.

Q In connection, for example, with inventory write-off policy, he did not ask you to make any further inquiries?

A No.

Q And in your judgment, were any further inquiries required or prudent?

A I didn't see any reason to, no.

Q Now, when you got to Standard that day -- by the way, I don't recall whether I asked you. Approximately how long were you there? I know it was a one-day trip but how many hours did that day consist of?

A I was at the building, the headquarters building, about six hours. I spent another hour with Mr. Bollo when he-- Mr. Louis Bollo when he drove me to the airport.

Q So all told it was about seven hours?

A Yes.

Q I suppose it was a pretty hectic day for you?

A It was a normal day.

Q Normal day? But you did speak to a number of people?

A I spoke to the people I have outlined.

Q And there were quite a number of matters that you were interested in and that you discussed?

A The number is shown here, basically.

Q I take it that there may have been matters that you discussed during the course of that day which are not reflected in your memo?

A Like what?

Q Well, like the topic we discussed before, cancellation of contracts with suppliers and personal relationships?

A I went out there believing that personal relationships with suppliers were important. This was affirmed. This was nothing new. It was not put in the report.

Q Well, my question to you is, you may have had discussions about other matters which did not turn up new material and, therefore, would not find their way into the memo?

A That's possible.

Q So the memo does not represent an all-inclusive report of what might have been discussed that day?

A Correct.

Q Now, the first person you spoke to was Mr. Bollo and I think the testimony was that he then sent you to see Mr. Rushia?

A Yes.

Q How was it that you came to see Mr. Rushia first? What was the nature of your conversation with Mr. Bollo which led you to Mr. Rushia?

A I asked him should I look at the inventory procedures first. He agreed.

Q Yes.

A I said, "Well, whom do I talk to?"

He said, "I think you should talk to Ernie Rusia."

Q Now, I take it that during your discussions with Mr. Rushia, you saw physically the kinds of documentation that Standard had with respect to its inventory?

A Yes.

Q Could you describe for me the kinds of documents that you saw?

A Index cards. I also not only saw them but, as my memo states, I obtained blank copies and brought them back to Pittsburgh.

Q Anything else?

A That's basically it. Nothing extraordinary.

Q Did you have any discussions, did you seek to

learn anything about the extent to which inventory records had been computerized?

A That's a tough term to define. They were on NCR punch card equipment. Roughly 50 -- 55 percent of their volume was on this.

Now, whether you want to define that as computerized is debatable. It was punch card equipment.

Q Well, we are getting into an area where my expertise is not very great, but were they in the process, was it your understanding that they were in the process of computerizing their inventory information so as to make the use of that information more efficient?

A Yes.

Q Do you know whether they had the capacity through the use of their, whatever computer system they had, to have provided you with a complete list of what was in the inventory?

A I understood that could not be obtained because only 55 percent of their business was on the NCR punch card machinery.

Q But as to that 55 percent, could you have gotten the computer printout?

A I don't know.

Q You don't know.

Q Did you ever ask anyone at Standard to provide you with a complete inventory list?

A No.

Q Did you ever ask anyone at Standard to provide you with the sales history of the inventory, either in whole or in part?

A No.

Q Now, when you had this conversation you testified to with Mr. Louis Bollo and inwhich he told you what the inventory write-off policy was, was there anyone else present while he was making those statements to you?

A Yes; Mr. Rushia.

Q Mr. Rushia was present?

A Yes.

Q Did he in any way, shape or form confirm the validity of the statements being made to you by Mr. Bollo?

A I believe he shook his head yes while we were talking, but I don't recall him verbally ever saying that is the policy.

THE COURT: How did he shake it, up or down?

THE WITNESS: He shook his head, as if to say yes.

Q So it is your best recollection now that all you got out of Mr. Rushia was a shake of the head?

MR. ABRAMS: I object to the form of the question, your Honor.

Q Well, your best recollection is that Mr. Rushia shook his head?

A Yes, in an affirmative manner.

Q In an affirmative manner?

A Right.

Q Did he say anything?

A I'm not sure. I can't recall.

Q May I refer again to the deposition that was taken in this case of you as a witness? Page 25, beginning at line 9. I ask you whether you were asked these questions and gave these answers?

"Question: During this conversation with Mr. Bollo, did Mr. Rushia speak?

"Answer: Yes, he did.

"Question: Did he speak in reference to this write-off policy?

"Answer: He agreed to all the policies I have narrated here. He agreed that these were the policies. Do you recall those questions and those answers?

A Yes.

(Continued on next page.)

Q And so far as you know, they were true and accurate when you gave them?

A Yes.

Q And they continued to be true and accurate?

A That's correct.

Q So let me ask you, is it now your best recollection that Mr. Rushia did or did not speak?

A Mr. Rushia did speak.

Q Did speak?

A But I do not recall him speaking in an affirmative reply on the policies. He talked about other things that I don't recall because we were there for over an hour.

But as far as those particular policies, I remember him shaking his head yes. That's it.

Q But you don't remember him saying "These are the policies"?

A Yes.

Q You do remember him saying that?

A I say no, I do not remember him saying these in fact are the policies.

Q All right. Now let me ask you this. You had spoken to Mr. Bollo about these policies. You had -- I think your testimony was you had written down what he had said verbatim?

A Yes.

Q You then read your notes back to him?

A Right.

Q It is your testimony he confirmed that your notes were correct?

A Yes.

Q During the course of the conversation Mr. Rushia verbally or otherwise agreed that the policies were correct?

A Right.

Q Then you happened to be passing by Pete Bollo's office?

A Yes.

Q And you went in to talk to him?

A Right.

Q You asked him if this was the policy; is that correct?

A Yes.

Q Can you tell me why in those circumstances you needed any confirmation from Pete Bollo that these were the policies?

A Asking him if this was the policy was a means of finding out in fact how he got the products that he sold. I was interested in his function of reselling products. I knew he got some of the products through this policy, so

I narrated it to him, asked him if this was so and if he got products through it.

Q Mr. Bollo, Mr. Louis Bollo had told you that Standard had gotten products as a result of this policy, hadn't he?

A Yes.

Q Did you have any reason to doubt his word?

A No.

Q Then why did you need confirmation from Pete Bollo?

A As I say, this was a means of beginning the conversation with Peter Bollo about his function.

Q Just the means of beginning the conversation?

A Well, finding out if in fact he got products this way and if he had done it in the past.

Q I want to know why you were concerned about whether he got products that way when Mr. Louis Bollo had told you they did get products that way? He wasn't on your list, was he, Mr. Peter Bollo, of people to say see?

A There was no list.

Q But I think you said before he was not on the agenda or something to that effect?

A Mr. Bollo had not pointed him out as a person I should speak to.

Q Okay. But, nevertheless, you did speak to him?

A Yes.

Q And you wanted him to confirm something that Mr. Louis Bollo had told you?

A I wanted to find out about his function.

Q But you did during the course of the conversation with him ask him to confirm something that Mr. Louis Bollo had told you?

A Yes.

Q It is your testimony that this was your way of getting into the subject of what his function was?

A Yes.

Q Did you ever make a second trip to Standard?

A Yes.

Q When was that, sir?

A I don't recall the date. It was a half-day spent later on in 1970, I believe.

Q 1970?

A Yes.

Q Could it have been September 10, 1969?

A Okay. Possibly.

It was the half-day spent reviewing the new projections.

Q Is it your recollection now that it was

September 10, 1969?

A Yes.

Q Will you tell me what you did on that particular occasion?

A I flew in for a half-day spent with Mr. Louis Bollo, to review their projections of sales and income, and I believe there were some financing needs attached with that also.

Q On that particular occasion you spoke only with Mr. Louis Bollo?

A I met Mr. Jerry Bollo also on that occasion.

Q After that trip did you make any memorandum?

A I don't recall.

Q You don't recall?

A No.

Q Let me see if I can help you.

A Okay.

MR. BLUMSTEIN: Could I have this marked for identification?

THE CLERK: Sure.

An 8-page document marked for identification as Defendant's Exhibit G.

(So marked.)

Q Mr. Bonar, let me show you Defendant's

Exhibit G for identification and ask you if you can identify it? I think you'd better look through the whole sheaf of papers if you will.

A Okay.

Q Have you looked through them?

A Yes.

Q Now, can you identify this document for me?

A Well, part of it is my work and part isn't.

Q All right. Can we go through it and tell us which part is yours and which is not?

A Right. It would appear that the first two, three pages are marked and they're ~~a right of~~ the type of projections that Mr. Bollo had given me at that meeting.

I don't know who the first two handwritten pages are. That's not my writing.

The latter handwritten pages are mine and would appear to form the basis of the first three typewritten pages.

Q You say the last four pages?

A Let me make sure of that count.

Q I count four.

A Then we agree.

Q The handwritten pages were notes that you made during your trip on September 10; is that correct?

A Yes, it would appear that that's the case.

Q And then the first two, first three typed pages were prepared on September 11?

A It's so annotated, so I assume that's the case, yes.

MR. BLUMSTEIN: I would like to offer in evidence, your Honor, the first three typed pages of Defendant's Exhibit G and the last four pages of Defendant's Exhibit G, which Mr. Bonar has acknowledged are in his handwriting.

MR. ABRAMS: I have no objection, your Honor.

THE COURT: No objection. All right. Mark it in evidence.

THE CLERK: The last four pages?

MR. BLUMSTEIN: First three and the last four.

THE CLERK: So marked in evidence as indicated to the Court.

(So marked as Defendant's Exhibit G in evidence, first three pages and the last four pages.)

MR. BLUMSTEIN: Mark this, please.

THE CLERK: Yes.

A nine-page document marked for identification as Defendant's Exhibit H.

(So marked.)

BY MR. BLUMSTEIN:

Q That memorandum of your earlier July meeting, I think you said you did not discuss it with Mr. McDowell. Did you discuss it with anybody else at Pittsburgh Coke or First Grant?

A I only discussed it with one person that I recall.

Q Who was that?

A Mr. Jim Stoll.

Q I see.

Now, after your second trip on September 10, 1969, did there come a time when you were no longer responsible for any of the activities of Pittsburgh Coke with respect to Standard?

A I was never responsible for Standard. Mr. McDowell was.

Q Well, what I mean is, in discharge of your responsibilities to Mr. McDowell did there come a time when really someone else stepped in and took over your role, whatever it was?

A Oh, okay. Mr. Fred Kirby, yes.

Q That happened about when?

A That would have happened in the winter of '70. Somewhere in there. Winter to spring, I believe.

Q There was a period of time when you were in

effect acquainting him with the nature of the -- of the assignment and matters of that sort?

A Yes, an overlap period.

Q Yes. You said that you were self-employed but we didn't find out just exactly what the nature of your self-employment is.

A Investor.

Q Investor?

A Yes.

Q For yourself as principal?

A Yes.

Q I don't want to pry into your personal affairs, but what kind of investments are you talking about?

A Everything from securities, bonds, stocks, to real estate to corporations.

Q Have you since the time that you left the employ of Pittsburgh Coke had any financial transactions with that corporation of any kind?

A I left Pitt Coke September 30 of '70.

Q Right.

A In I believe November and the early part of December of '70, I was employed by them as a consultant, for American Fliers Airline. That has been the last time I have had any financial dealings whatsoever with any Hillman

organization.

MR. BLUMSTEIN: I have no further questions.

REDIRECT EXAMINATION

BY MR. ABRAMS:

Q Mr. Bonar, my notes indicate that maybe about 15 minutes ago you were asked by Mr. Blumstein a question which was something along the following lines. "After your return to Pittsburgh, subsequent to your July, 1969 visit to Standard, did you see any reason to make any further inquiry with respect to Standard's inventory write-off policy."

My notes indicate that you said "No"?

A Yes.

Q Can you tell us why you decided that there was no reason to make any further inquiry with respect to Standard's inventory write-off policy?

A Because from the information I gained, there appeared to be no problems in the inventory area.

MR. ABRAMS: I have no further questions.

RECROSS EXAMINATION

BY MR. BLUMSTEIN:

Q One question, Mr. Bonar.

In the course of examining any financial material with respect to Standard, did you ever see any

figure or calculate any figure as to the percentage of inventory write-off? How much inventory was written off on your --

A Well, in this memo I was given the figure from Mr. Bollo. It says "current accounting practice is to preserve $4,000 a month or $48,000 a year for inventory write-offs. This is roughly 1.4 percent of year-end 1968 inventories."

(Continued next page.)

YLH 1

Q Did you make any determination based on actual figures for any given year whether inventory write-offs came out to be higher or less than 1.4 percent?

A No.

Q One further question: during the course of your discussions with Mr. Louis Bollo about inventory write-offs, did he say anything to you about what the practice of the company was with respect to damaged material, stolen material, material that was declared obsolete by the CAB, material that could not be sold because it would violate the law, something of that sort?

A No, I do not recall him speaking about that.

Q Did you at anytime receive any information about that subject from anyone at Standard?

A No.

MR. BLUMSTEIN: No further questions.

MR. ABRAMS: No questions. Thank you, Mr. Bonar

THE COURT: You may step down, Mr. Bonar.

(Witness excused.)

MR. WILLIAMS: Mr. Jerry Bollo.

JEROME J. BOLLO, called as a witness, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q Mr. Bollo, what is your relationship to Louis J. Bollo?

A We are brothers.

Q What is your education, please?

A Three and a half years, Manhattan College, science background.

Q Before you worked for Standard Aircraft did you have any service in the Army?

A From December, 1941 through September, 1945. I was in the US Army Air Corps.

Q In what capacity?

A I was a bombardier in the Air Corps.

Q Where are you employed now?

A I am Senior Vice President of Marketing for Standard Aircraft Equipment.

Q How long have you been employed by Standard Aircraft?

A 26 years.

Q Would you tell us in what capacity you have been employed over the years?

A I was hired in 1948 as a -- both an inside and

outside salesman.

Roughly in 1957 I was appointed Sales Manager of the corporation. In the early 1960's I became a Vice President of Sales and Service. Approximately one year later a full Vice President and a Senior Vice President in 1967 or '68.

Q What is your primary responsibility now?

A I am a Senior Vice President of the corporation in charge of marketing.

Q Would you tell the Court, please, when Mr. Louis J. Bollo founded Standard?

A In 1933.

Q What position did he hold at Standard until 1970?

A Until 1970 he was President of the corporation and Chairman of the Board, preceding the acquisition by Pittsburgh Coke and Chemical Company.

Q Was it a wholly owned company; did he wholly own it prior to a certain period when it went public?

A It was a wholly owned private corporation, with the ownership 90 percent controlled by my brother, until we went -- the company went public, and my recollection is that year was 1959.

Q To what extent did your brother, Mr. Louis J.

Bollo, participate in day to day operations of the company?

A He was active in the day to day operations of the company on a very regular basis.

Q Could you tell us what his practice was as to hours, what hours did he keep?

A It was his habit over the full time that we worked together at Standard Aircraft for him to arrive very early at the office -- I would say the latest would generally be about 8:00 o'clock, and he would leave the office between 5;00 and 5:30 in the afternoon -- the evening, rather.

Q What authority did he exercise in the affairs of the company?

A He was aware of every major factor that took place in the operation of the company.

Q Kept in touch with the suppliers, for example?

A That function --

Q Was that your job or was it his?

A Well, it was a combination of both. It depended upon the level at which we are referring within a particular company.

To answer the question succinctly, we both had responsibility in that area as he assigned it to me.

Q Did he have dealings with all the suppliers?

A I cannot answer that question with a yes for

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the simple reason that there are approximately between 90 and 100 manufacturers involved, and so it would have been a physical impossibility.

If we are limiting the question to the major product lines, the answer would be yes.

Q How many principal manufacturers did you buy from?

A There were ten divisions of the Bendix Corporation; Champion, Whittaker, Marathon Battery -- these are the principal product lines.

Q And those are not included with the ten Bendix divisions?

A Bendix is ten separate corporate entities under one parent company.

Q How many minor suppliers, roughly, did you have over this period?

A It varied. The period in question, we represented approximately 70 different companies.

Q Let's see if I am right: Who were your major suppliers, say the three big ones?

A Our major supplier would have to be the principal divisions of Bendix, which are Energy Controls, Navigation and Controls, Electric Power, Scintilla; those are the principal Bendix Divisions, those four.

Beyond that, Whittaker, Champion, Goodyear, in not necessarily that order.

Q Would you tell His Honor how incoming mail was handled in the office?

A Incoming mail, as a matter of practice was reviewed prior to distribution by my brother on a daily basis; each morning that was his practice.

Q You mean before it was sent to the addressee?

A Before it was distributed to the various departments within the company.

Q Are you saying that he read all the incoming mail?

A He would scan the mail. As we became -- it was a practice that he had followed for a period of years.

With the growth of the company, as the mail became larger, he continued the practice, but quite obviously it became less practical for him to review every piece of mail in detail.

Q Were any major decisions made by anyone else other than your brother?

A No.

Q Let's come to Whittaker. What was the relationship of the Whittaker Corporation to Standard?

A Standard Aircraft represented Whittaker as a

distributor of their product line from 1959 through 1971.

Q Did I ask you to make certain charts, have certain charts been made under your direction?

A Yes, you did.

MR. WILLIAMS: Will you mark that for identification.

THE CLERK: One page document marked for identification as Plaintiff's Exhibit No. 11.

(So marked.)

BY MR. WILLIAMS:

Q I show you Plaintiff's Exhibit 11 for identification. Would you tell us, please, what this represents?

A This is a record of our gross sales in the period 1965 through 1968, and it also shows the proportion of those sales to total sales.

Q The gross sales of Whittaker Parts, is that it?

A Correct.

Q Was this chart made from figures which you supplied?

A Yes, it was.

MR. WILLIAMS: I offer it in evidence.

MR. BLUMSTEIN: May I ask one or two questions on a voir dire?

VOIR DIRE EXAMINATION

BY MR. BLUMSTEIN:

Q You said, Mr. Bollo, that you represented Whittaker from 1959 through 1971. This particular document has only four years, '65, '66, '67 and '68. I am curious as to how those four years were selected. Was that something that you --

MR. WILLIAMS: I asked him to do it, Mr. Blumstein.

MR. BLUMSTEIN: Fine. I have no objection to the document, your Honor, except I would like the opportunity overnight just to check the mathematics. I assume they are correct.

THE COURT: We will mark them in evidence subject to any corrections.

THE CLERK: Plaintiff's Exhibit 11 now marked in evidence.

(So marked.)

BY MR. WILLIAMS:

Q Mr. Bollo, there are three columns here. The first obviously are years so you don't need to refer to that. Would you run down the first column, or compare the first column and the second column and tell His Honor what that second column means?

A The first figure in that column, a million sixty-

five thousand dollars, were the gross sales for that year 1965 and those sales represented 18.1 percent of our total sales, gross sales in 1965.

Q That is of all your business?

A Of all our business. The same facts follow for the preceding years. Percentage of sales ran 18.1 in that year of '65, and so forth, as shown: 17.3, 21.5 and 16 percent in 1968.

Q What were the Whittaker products just for our information?

A Whittaker made a group of valves used on both reciprocating, but primarily jet aircraft in terms of the product we sold, for controlling the distribution of hot air within the engine, primarily.

Q How large a discount did Standard receive from Whittaker during this period of '65 to '68?

A Our discount in Whittaker Product Line varied from 15 to 22 percent, and was contingent upon size of our individual monthly purchase order placed with Whittaker.

Q For example, on orders of $200,000 or more what was the percent?

A It was, I think, 22 or 23 percent.

Q That would be off list price?

A From the list price, or the price that our air-

line customers paid for that item.

Q If the airline customer bought directly, or could buy directly from Whittaker, what would he pay?

A He would pay the list price from which we had received a discount.

Q What is meant by first generation aircraft?

A First generation aircraft applied to the series of jets, the 707, 727, DC8, primarily.

Q What is meant by second generation jet aircraft?

A The second generation of jet aircraft are those that were introduced at the time of 747. They include the 747, the DC10 and the L1011.

Q Were any of these sales represented on that chart, which is exhibit 11, did any of those represent sales of parts for the 747 or other second generation aircraft?

A No, they did not.

MR. WILLIAMS: Would you mark this memorandum please?

THE CLERK: A four page document marked for identification as Plaintiff's Exhibit 12.

(So marked.)

MR. WILLIAMS: Your Honor, the original is hardly legible, so I had my secretary type up -- but I will hand them both to your Honor so that you can

look at them while the witness examines a more legible copy.

THE COURT: All right.

Q I show you, Mr. Bollo, Plaintiff's Exhibit 12 for identification and I ask you if you have seen this before?

A The original of the document, yes.

Q When did you see it?

A In the Spring of 1967.

Q How did you happen to see it, how did you come by it?

A It was sent to us by our branch manager in Los Angeles, Fred Bohling.

Q Did you discuss this memorandum, the contents of this memorandum, with your brother, Louis Bollo?

A Prior to receiving the memorandum itself, it was discussed with both of us in a telephone conversation from Los Angeles by Fred Bohling.

Q You mean Mr. Louis Bollo was on the phone, too, with you?

A Yes, in his office.

Q And then after the memorandum was received did you discuss it with Mr. Bollo and did he see it?

A Yes, we did.

MR. WILLIAMS: I offer it in evidence.

MR. BLUMSTEIN: One question on the voir dire.

VOIR DIRE EXAMINATION

BY MR. BLUMSTEIN:

Q Mr. Bollo, I think you said you received this from Mr. Bohling?

A Yes, I did.

Q This memorandum.

A Yes.

Q Did Mr. Bolling tell you how he had obtained a copy?

A Yes, he did.

Q What did he say?

A We know where he obtained it. We don't -- at least I do not to this day know how he obtained it.

Q Where did he obtain it from?

A This is a confidential internal document that was -- he obtained it somehow from corporate management of ~~the~~ Whittaker ~~level~~ -- at Whittaker, rather, in Beverly Hills, California.

He would not reveal to me, and as far as I know, he did not reveal to Lou Bollo, how he obtained this, what his source of information was.

MR. BLUMSTEIN: I have no objection, your Honor.

THE CLERK: Plaintiff's Exhibit 12 now marked

in evidence.

(So marked.)

BY MR. WILLIAMS:

Q Who was Mr. D. T. ~~Kimble~~ Kimball, please?

A David T. ~~Kimble~~ Kimball was Vice President of the Whittaker Corporation, or the division we were operating with or held the distributor agreement with.

Q Who was G. T. C. Danks?

A G. T. C. Danks was employed by Whittaker and was manager of their Aircraft Components Division, which was created in 1966.

(Continued on next page)

MR. WILLIAMS: Your Honor, I would like to read from page 2 of this Exhibit, starting with Section 2, "Future Plans."

"You indicated in your memo of December 15, 1956, to me that the Aircraft Components Division was set up as a profit center and that you did not see any reason why I should not work up A.C.D. volume by competing with the Standard operation."

Q What is the Aircraft Components Division?

A Aircraft Components Division was a subsidiary division of the Whittaker Corporation, created to market the product as their own distribution company in direct competition with Standard Aircraft.

MR. WILLIAMS: I continue to read from the Exhibit:

"I assume that this would imply that at a point in time which we have discussed, the Standard agreement would be officially cancelled. On this basis, I have made plans to take a swing through the east the third week of this month with Jack Kelty for the primary purpose of making an initial contact with the purchasing people at TWA, American, National, Eastern, Delta, Southern, and Pan Am in New York City.

"This is about the maximum number that can be covered within a week, leaving on ~~the~~ a Sunday, and return-

ing the following Saturday.

"Due to the fact that Jack has to spend next week at Boeing, Michoud, on the ten-inch valves, and will be gone all week, I will now put this trip off until the first week of February. Delaying the trip will also give more assurance for getting the targeted quota for this quarter. In the initial contacts, there will be no intent to indicate that the Standard agreement will be cancelled, but only a meeting with the purchasing people involved, to advise that we have set up to more expeditiously handle their orders from the plant than we have ever been able to do in the past.

"The few orders that have been placed with us by the primes have been delivered far more rapidly than they were prior to the set up of this operation, but certainly not as rapidly as Standard can deliver with an inventory.

"If and when the Standard agreement is officially cancelled, we will have to establish inventory levels on certain items, whether the material physically stays at the Technical Products Division to back up production, or is physically segregated into A.C.D. location."

Q Would you tell the Court, please, what you remember of the discussion with Mr. Louis Bollo upon receipt of

this telephone call and this memorandum?

A Well, our principal discussion really preceded the memo itself. We reacted to the information --

Q Please don't say, "we reacted." What was said, if you can remember what was said?

A All right.

Q "Reacted" is a conclusion.

A Basically, I told him that this was discouraging, and it looked like Danks had the strength to bring our agreement to an end.

His retort was one of agreement, followed by a question. The question was, "Yes, but what could we do about it?" There really was no action we could take in terms of our distributorship agreement, based on this information.

Q Have you exhausted your recollection of the conversation with Mr. Louis Bollo at this point on this subject?

A There were several conversations. This is a summary that would have been repetitive as far as other conversations were concerned.

Q This is all you remember?

A This is what I remember, yes.

Q After reading this memorandum, was anything said about anticipating a cut-off of the Whittaker business?

A I'm not sure I can answer that with a precise

date in time. It was a question of the product line, and its security in terms of the relationship --

MR. BLUMSTEIN: I'm sorry to interrupt, your Honor, but I think Mr. Williams' question was directed to conversations that Mr. Jerome Bollo had with his brother, and I think the answer should be limited to those conversations.

Q See if you can give us just the conversation that you remember, and I ask you, in an attempt to refresh your recollection, or to probe, was anything said about anticipating a complete cut-off by Whittaker?

A Yes.

Q Do you recall what was said?

A We talked about the possibility of it happening within a year, within two years. It was a guesstimate on both parts.

MR. WILLIAMS: Would you mark this for identification, please, a memorandum dated July 8, 1967, to D. T. Kimble from G. C. Danks.

THE CLERK: Marked Plaintiff's Exhibit 13 for identification.

(So marked.)

Q Would you look at this memorandum, please, this Exhibit 13, and tell us if you had seen that before?

A Yes, I have.

Q When did you see it?

A In the summer of 1967.

Q Where did you see it?

A In our office in Garden City.

Q How did you come by it?

A It followed the same procedure as we outlined in the previous memo. It came from Fred Bohling. We were advised about it before receiving it, by telephone.

Q Did you discuss it with Mr. Louis Bollo?

A Yes, I did.

Q When did you discuss it with him?

A We discussed it following the telephone conversation itself, and, second, after receipt of the document.

MR. WILLIAMS: I offer it in evidence, your Honor.

MR. BLUMSTEIN: I have a few questions on the voir dire.

VOIR DIRE EXAMINATION

BY MR. BLUMSTEIN:

Q I take it your testimony is, Mr. Bollo, this came from Mr. Bohling?

A I didn't hear you.

Q This came from Mr. Bohling?

A Yes.

Q with respect to this document, did you inquire as to where he had obtained it?

A I asked him where he obtained it, and following the information he gave us concerning the first document, he said he would not reveal his source.

We knew it came from Whittaker's corporate headquarters in Beverly Hills, that was all we knew.

Q That is what Mr. Bohling told you?

A That is correct.

Q But he would not tell you anything further about it?

A No, he would not.

Q This document contains a large number of handwritten notations. Can you identify that handwriting?

A No, I cannot.

MR. BLUMSTEIN: I have no objection, your Honor.

THE COURT: All right. Mark it in evidence.

THE CLERK: Plaintiff's Exhibit number 13, now marked in evidence.

(So marked.)

MR. WILLIAMS: Your Honor, I would like to read certain portions of Exhibit 13, starting at the beginning.

This is a memorandum dated July 8, 1967, to D. T.

Kimball
~~Kimble~~ from G. C. Danks. Subject: Proposal for Cancellation of the Standard Aircraft Distributor Agreement and Absorption of This Business into Aircraft Components Division.

At the upper righthand corner is the typed word, "Rough," underlined.

"The purpose of this report is to present a concise and logical plan which will result in the ultimate cancellation of the Standard Aircraft Equipment distributorship agreement, and the absorption of this business into the Aircraft Components Division."

Skipping down to the next one, which is written in:

"Background: In April of 1965, Aircraft Components Division was established. A pro forma for this Division was to operate as a profit center division. Following is a summary of the actual shipments from the Aircraft Components Division during the period of July 1, 1966 through June 30th, 1967, which aggregates $650,680."

Then skipping over to the bottom of the next page, the last line:

"Although A.C.D. was initially established as a profit center, and not necessarily a growth entity,

it is apparent at this point in time that the anticipated profit factor on a minimum amount of business has been achieved. The over-all profit can be significantly increased with the cancellation of the distributorship and the absorption of this business by A.C.D. This will be further amplified in a subsequent section of this report."

Then at the bottom of the page -- I should include, also, the title of Section 2, which is following what I have just read:

"Considerations ~~and~~ in the Cancellation of the Standard Agreement."

Then to the bottom of the page:

"Over the past year I have made two trips outside the plant, and have contacted most of the major airlines, including American, TWA, National, Eastern, Delta, Pan Am, United, Canadian Pacific, et cetera. With the policy of neither fish nor fowl, it has been very difficult to represent the Aircraft Components Division as being able to supply the service provided by our distributor. However, the major airlines in the ~~his~~ country, i.e., United, TWA and Pan Am, expressed a definite desire to do business directly with the plant, providing the plant is able to provide ~~this~~ the service they

require."

On page 11, I would like to read paragraph 4:

"Under the terms of the Standard distributorship agreement, six months notice is written in. We have nothing but a moral obligation. Insofar as the residual inventory which will be available in their stock in my opinion, Standard must have an appreciable amount of material with no value. To my knowledge, in discussions with Fred Bohling, they have never had an inventory write-down of obsolete or overstocked material. The agreement has been in effect for approximately seven years, during which period of time they have undoubtedly enjoyed sales of approximately five million dollars, and if on this basis they now find themselves with two hundred to two hundred and fifty thousand dollars worth of useless material, this is certainly a reasonable ration, considering the volume."

Q Did you discuss this memorandum which you received from Mr. Bohling about Whittaker, this internal memorandum, with Mr. Louis J. Bollo?

A Yes, I did.

Q Would you tell us, please, what you remember of that conversation?

A Essentially, I told him that the pressure was

building, Danks seemed to be gaining strength, and that I doubted we had the time left in the distributor agreement that we had previously discussed; roughly, a year to two years.

Q Was anything said about anticipating -- anything further said about anticipating a cut-off of Whittaker business?

A Really, the statements made by my brother were qualified agreements with what I had said. He didn't necessarily -- but he qualified it by saying, "If you are right . . ." -- Again he asked, "What is the alternative, what can we do about it?" And that was the position he took.

Q Did you ever discuss with your brother whether this fairly newly-created division of Whittaker, the Aircraft Component Division, would be in competition with you, apart from these memoranda?

A Yes, we did.

(continued on next page.)

Bollo-direct

DIRECT EXAMINATION

BY MR. WILLIAMS: (Cont.)

Q Would you tell us what the discussion was?

A In roughly June of 1966, I received a telephone call from Dave Kimball, the Vice President of Whittaker.

MR. BLUMSTEIN: If your Honor please, I think the question was discussions with his brother. Can we please have an answer responsive to that question?

Q Let me ask this question.

You are referring to a telephone call which you say you got from someone at Whittaker?

A This all relates to your question.

Q Yes. Did you discuss that telephone call with your brother?

A Yes, I did.

Q All right. Will you tell us what you told your brother of the telephone call?

A When we were -- when I was advised that Whittaker was creating their aircraft components division, I advised Dave Kimball that a decision was imminent on Standard Aircraft opening in Los Angeles. That was confirmed within a matter of weeks by a decision made by my brother to do just that.

MR. BLUMSTEIN: Your Honor --

THE COURT: I am a little unclear on that. I am not sure what the point of that was.

MR. WILLIAMS: I think this -- I think, your Honor, this was an attempt on the part of Standard to compete, to come back and compete with Whittaker.

THE WITNESS: With Whittaker.

THE COURT: What I mean is, were you reminding your brother that in June of '66 you had had a conversation with Kimball?

THE WITNESS: No, no.

THE COURT: No?

THE WITNESS: No.

THE COURT: You used the date June of '66.

THE WITNESS: The import, your Honor, was the decision on Whittaker's part to establish their own distribution company in the summer of 1966, located in California.

What that meant to us was that we would have a strong competitor, number 1, who would take primarily all of our West Coast business, unless we decided to open an operation in that area.

MR. BLUMSTEIN: Your Honor -

THE COURT: Oh.

MR. BLUMSTEIN: Your Honor, this is the area

that I thought Mr. Bollo was getting into which I don't think he should be permitted to get into in terms of his own judgments and characterizations of events but rather he should be limited to testimony as to the facts, conversations with his brother, action taken as a result of those conversations and matters of that sort.

MR. WILLIAMS: I think he so testified.

MR. BLUMSTEIN: I am confused.

THE COURT: I have the impression initially that I think is no longer valid, that as part of a conversation of -- with regard to this development, he had reminded his brother about the competitive situation created in 1966, although, as I said earlier, I did not understand that this Los Angeles operation was really a distribution center. I thought it was simply -- you described it as a division of ~~Kimball~~ Whittaker.

THE WITNESS: That's right.

THE COURT: I thought that was simply a manufacturing division of Kimball that happened to be out there.

MR. WILLIAMS: Of Whittaker.

THE COURT: Of Whittaker, sorry.

THE WITNESS: It was their distribution division.

THE COURT: But it was a distribution division?

THE WITNESS: Yes sir.

THE COURT: Not a manufacturer?

THE WITNESS: No sir.

THE COURT: Where was Whittaker's plant, somewhere else?

THE WITNESS: It was then located in -- their plant?

THE COURT: Yes.

THE WITNESS: It was in the same basic area, Van Nuyes, California.

THE COURT: It was in California?

THE WITNESS: Yes sir.

BY MR. WILLIAMS:

Q So to counter the business that Aircraft Component Division of Whittaker was doing, you, your brother, rather, decided to open a branch of Standard Aircraft in Los Angeles?

A That is correct.

MR. BLUMSTEIN: I object to the form of that question, your Honor.

MR. WILLIAMS: I think it's already been testified to.

THE COURT: Let me ask you. We are dealing to some extent with historical facts here.

MR. BLUMSTEIN: That's correct.

MR. WILLIAMS: Yes.

THE COURT: I do not see any need to get, shall we say, technical about it.

MR. BLUMSTEIN: I'm trying to avoid it.

THE COURT: I know you are. I am not criticizing you.

So that was done. In other words, there was a Standard operation in Los Angeles, sort of side by side with ACD?

THE WITNESS: Correct.

THE COURT: Where are we going from there to here?

MR. BLUMSTEIN: I have no dispute with the facts. They certainly conform to my understanding.

It's the characterizations of what these operations were and what they were intended to do which I don't think is proper.

THE COURT: Right. I am not paying too much attention to characterizations as I am to facts.

MR. BLUMSTEIN: I understand.

THE COURT: What I want to know is what is the

connection.

MR. WILLIAMS: Right, your Honor.

THE COURT: I take it, you will explore that, Mr. Williams?

BY MR. WILLIAMS:

Q You have heard his Honor's question as to what connection this memorandum dated July 8, 1967 had with the establishment of your branch in Los Angeles. When was your branch office opened?

A In August of 1966.

Q It was opened before you got this memorandum?

A Oh, yes. No. Go ahead.

Q What is the significance -- what was the significance to you, to Standard Aircraft of what was stated in this memorandum, which is exhibit 13?

A The significance of that memorandum was that Whittaker had created through their aircraft components division their own distribution company that was in direct competition with Standard Aircraft and which Danks stated was capable of supporting the total airline after-market program.

Q I think I asked you what discussion you had with your brother, Mr. Louis Bollo, about this, and was it at this -- am I correct that at this point he said "well, what can we do about it, what's the alternative?"

A When we received the second memo, he agreed that the threat was stronger but his conclusion, his statement to me was a question, "What can we do about it, what alternative is open to us, but to continue as we were."

Q Did you visit the Whittaker plant in 1969?

A I believe it was January of 1969, yes.

Q Did anyone accompany you on that visit?

A Ernie Rushia.

Q Whom did you meet at Whittaker in California?

A At that point in time, Whittaker, the division we were operating with, had a new general manager, Harry White. We met with Harry White and with Glenn Danks.

Q Is Glenn Danks the man whom you referred to in the memoranda?

A Yes. The manager of ACD.

MR. WILLIAMS: Could you please mark this for identification, Plaintiff's exhibit 13?

THE CLERK: Yes. 14.

MR. WILLIAMS: 14.

THE CLERK: Right.

A two-page document marked for identification as Plaintiff's exhibit number 14.

(So marked.)

Q I show you Plaintiff's exhibit 14 for

identification and I ask you if you have seen this memorandum before?

A Yes, I have. I prepared it.

Q When did you prepare it?

A January 28, 1969.

Q Would you tell his Honor what this represents?

A This was a memo that I prepared following my trip in early January, directed to Whittaker to our branch manager in Miami, John Davies.

Q Did you discuss the contents of this memorandum with your brother Mr. Louis J. Bollo?

A All of this was discussed with my brother before and after my return from the trip itself, as was my practice.

Q You couldn't discuss the contents of this memorandum with your brother before you went but after --

A I say, during the trip, while I was in California, by telephone, I reported back to him and then after I returned.

MR. WILLIAMS: I offer this in evidence.

MR. BLUMSTEIN: May I ask one question, your Honor?

(Continued next page.)

VOIR DIRE EXAMINATION

BY MR. BLUMSTEIN:

Q Mr. Bollo, this memorandum is directed to J. J. Davies and you've identified him. Did you send him a copy of this memorandum to your brother?

A There is no evidence that I did and I can't give you a reason why I did not.

Q But you have no recollection of sending him a copy?

A No, I cannot say I did.

MR. BLUMSTEIN: I see.

I have no objection, your Honor.

THE CLERK: May I have that, Mr. Williams?

MR. WILLIAMS: Yes.

THE CLERK: Thank you.

Plaintiff's exhibit number 14 now marked in evidence.

(So marked.)

MR. WILLIAMS: I would like to read paragraph 2 of this memorandum from J. J. Bollo to J. J. Davies, dated January 28, 1969, subject Whittaker.

Paragraph 2, under a quick summary is as follows:

"Paragraph 2 on the Lockheed 1011 and the

10 Bollo

DC-10, the competitive situation is so great that in all probability we will not be handling either unit or spare parts support business on these aircraft. The 747 will probably be the same."

DIRECT EXAMINATION

BY MR. WILLIAMS: (Cont.)

Q Now, will you tell his Honor what "unit" means, either unit or spare parts? What is unit business?

A Units are the complete item as installed on the aircraft. Spare parts are those items which are used in the unit itself.

Q You say that you discussed the contents of this memorandum with your brother both on the telephone and also on your return and even before you went?

A Not --.

Q Not before you went? Before you came back?

A Yes.

Q Would you tell us what you remember of those conversations?

A I --

Q What did your brother say about it?

A Well, first I told him of the Harry White's plan to exclude us from the 747 and second generation aircraft and of the general hard attitude that he was assuming

towards Standard Aircraft.

Q And what --

A I covered each of the --

Q What did your brother say?

A He particularly reacted to the point of Harry White having been appointed a general manager of that particular Whittaker division, the division we operated with, because he was as much aware as I was of Harry White's anti-distributor attitude.

So he was displeased by Harry's appointment, one, and second, by the position that he took in relation to the second generation aircraft.

MR. WILLIAMS: I ask that you mark this Plaintiff's 15 for identification.

THE CLERK: Yes. One page?

MR. WILLIAMS: One page, Telex.

THE CLERK: One-page document marked for identification as Plaintiff's exhibit number 15.

(So marked.)

MR. WILLIAMS: Would you show this to the Court, please.

THE CLERK: Yes.

BY MR. WILLIAMS:

Q I show you, Mr. Bollo, what appears to be a

Telex addressed to Standard Aircraft Equipment Company on February 6th, 1969, sent by Glenn C. Danks, manager, Whittaker Corporation. Did you receive that Telex?

A Yes, I did.

Q Did you show it to your brother Lou Bollo?

A Yes, I did.

MR. WILLIAMS: I offer it in evidence.

MR. BLUMSTEIN: May I, your Honor?

VOIR DIRE EXAMINATION

BY MR. BLUMSTEIN:

Q Do you recall when you showed it to your brother, Mr. Bollo?

A It would have been the same day it was received, the time it was received, assuming he was in the office that day. I don't recall the exact circumstances.

Q There are some handwritten notations in the upper right-hand corner. Do you see them?

A Yes.

Q Would you take a look? I think the first name is -- looks like J. E. Rushia?

A J. E. Rushia, J. J. Davies.

Q Can you identify that handwriting?

A That's my printing.

Q Can you tell us how you came to place that

13 Bollo-

handwriting on the document?

A I made xerox copies of this TWX including a copy for myself and presented the original copy to my -- gave it to my brother.

Q I see. You sent copies to Mr. Rushia and to Mr. Davies?

A Yes, I did.

Q And that is your recollection of the procedure that you followed?

A That is correct.

MR. BLUMSTEIN: I have no objection, your Honor.

MR. WILLIAMS: May I read it, your Honor.

THE COURT: All right. Mark it in evidence.

THE CLERK: Plaintiff's exhibit 15 in evidence.

(So marked.)

MR. WILLIAMS: This is sent attention Mr. Jerry Bollo by Danks, the manager of Whittaker Corporation. Subject, 747 pricing and a reference to TWX.

"In accordance with our recent discussions with Harry White, it is Whittaker's intent to accomplish all initial provisioning for the 747 aircraft through the Controls Division. We are currently in the process

of preparing a letter to be sent to all potential 747 operators which will establish a list price for the end assemblies only.

"This letter will advise these operators to place all initial procurement with the Controls Division.

"For your information, we have already supplied provisioning parts data and overhaul manuals directly to the 747 operators for all units with the exception of one. Data has not yet been provided for the 6 inch relief valve, as this valve is still undergoing qualification at our facility.

"We further anticipate being able to supply ATA 200 documentation directly to the operators within the next 90 to 120 days."

DIRECT EXAMINATION

BY MR. WILLIAMS: (Cont.)

Q Now I ask you, Mr. Bollo, did you or anybody else show this Telex or the last three or four exhibits which I have shown you, internal memoranda of Whittaker, to anyone at Pittsburgh Coke & Chemical or First Grant before the closing?

A I did not.

Q Do you know anyone in your organization who did?

A I do not.

Q When you showed this Telex to Mr. Louis Bollo did he have anything to say?

A I can't recall what he said about this particular TWX message, since it was a confirmation of --

MR. BLUMSTEIN: If your Honor please, just the conversation.

A (Continuing.) No.

MR. BLUMSTEIN: Thank you.

Q The answer is no.

Have you exhausted your recollection as to whether you had any further discussion with Mr. Louis Bollo of this Telex?

A I know I discussed this Telex with Lou Bollo. It is so interrelated with the preceding trip that we just discussed, that to distinguish this from the previous discussion is for me an impossibility.

Q Let me ask you this. Did this apply to initial provisioning and to spare parts as well?

A Both.

MR. BLUMSTEIN: If your Honor please, I think the agreement speaks for itself. If there is any language --

MR. WILLIAMS: I am not asking about the

agreement.

MR. BLUMSTEIN: Oh, I'm sorry. What were you asking?

MR. WILLIAMS: I was asking about any conversation with Lou Bollo and I exhausted the witness' recollection. Therefore, I am entitled to pose a specific question to him.

MR. BLUMSTEIN: Fine. We're talking about conversation?

MR. WILLIAMS: Yes, just conversation.

MR. BLUMSTEIN: Okay.

BY MR. WILLIAMS:

Q Now, did Lou Bollo refer -- did you discuss with him whether this -- in discussing this matter with your brother, did he or did you point out that this applied to spare parts as well as to the initial provisioning?

MR. BLUMSTEIN: Your Honor, I must object on the ground that the question is leading. I think he can focus the witness' attention on a particular subject, but I really would like to get the witness' recollection.

MR. WILLIAMS: Of course it's leading. You're entitled to lead after you've exhausted a witness' recollection.

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MR. BLUMSTEIN: I beg to differ with you, Mr. Williams. I think you can direct his attention to a particular subject matter but you cannot do it in a leading fashion, as you have done in this question.

THE COURT: I suppose what he is saying here, Mr. Williams, is that on its face mention is made here only of initial provisioning.

MR. WILLIAMS: Provisioning.

THE COURT: Did I understand you believe you have already asked this witness whether anything beyond that was discussed?

MR. WILLIAMS: Yes, and I think --

THE COURT: He says he has no recollection?

MR. WILLIAMS: He says he hasn't any recollection of a discussion, but I -- because he has no recollection, I then asked him specifically, does he remember discussing whether this applied to spare parts as well as initial provisioning.

THE WITNESS: Yes, it did.

MR. WILLIAMS: I think he said it did. I think he answered it.

MR. BLUMSTEIN: All right. I'll withdraw the objection, but I would respectfully request that your Honor direct the witness to limit himself to the

conversations that were had with his brother.

Those are the key things in this case and really the only admissible things.

MR. WILLIAMS: I think he has. If there is any fault, it's mine, your Honor, not the witness'.

MR. BLUMSTEIN: I think there has been some --

BY MR. WILLIAMS:

Q Did you discuss with your brother whether there was any financial impact on Standard as a result of these Whittaker communications?

MR. BLUMSTEIN: Your Honor, can't the question be, did you discuss what the subject of the financial impact on Standard --

MR. WILLIAMS: That's what I did.

MR. BLUMSTEIN: Let's go on from there, what that conversation was.

MR. WILLIAMS: Exactly. I did ask.

BY MR. WILLIAMS:

Q Did you discuss with your brother the financial impact of these Whittaker communications on Standard?

A Yes, I did.

Q What was the discussion? What did you say to your brother, what did your brother say to you?

A The point I brought out was, number one, that

there was significantly more involved than just the loss of the 747 business. We would lose, in the case of many of the airlines, the existing business on first generation aircraft that we had.

Q Now, there has been testimony in the case that Standard did business with Bendix Corporation. Which of the divisions did the largest business, first two, say?

A Navigation and Controls would be second. Energy Controls would be the larger of the two.

MR. WILLIAMS: Would you mark for identification this paper?

THE CLERK: Yes.

THE COURT: Mr. Williams, may I inquire, this witness, of course, is going to be subject to cross-examination.

MR. WILLIAMS: Yes.

THE COURT: I see that I have an assemblage here in the back.

MR. WILLIAMS: It's a good place to quit.

THE COURT: Well, I do not want to cut you off at some inconvenient point.

MR. WILLIAMS: No. I am going to another subject.

THE COURT: All right.

MR. WILLIAMS: That's Bendix. I am through with Whittaker.

THE COURT: Then we will recess until 10 a.m. tomorrow.

THE CLERK: A one-page document marked for identification as Plaintiff's exhibit number 16.

(So marked.)

(Whereupon, a recess was taken until October 17, 1974 at 10 o'clock a.m..)

* * * *

I N D E X

Witnesses	Direct	Cross	ReDir	ReCr	V. Dire
Putnam B. McDowell	9	41	83	85	
Richard M. Johnston	87	99	112	115	
Rodney L. Bonar	116	125	152	152	
Jerome Bollo	155				171 185 188

Exhibits

Plaintiff's		For Id.	In Evid.
4	Report 12/31/65	20	22
5	Report 12/31/66	20	22
6	Report 12/31/67	20	22
7	1-pg Document	20	
8	4-pg Document	31	
9	6-pg Document	37	
2	21-pg Document	11	
3	4-pg Document	15	
10	2-pg Document	92	93
11	2-pg Document	161	161
13	Memo	170	172
12	Document	163	
14	Document	183	185
15	Document	187	189

(continued on next page.)

I N D E X (continued)

Exhibits (continued)

Defendant's		For Id.	In Ev.
A	Document	43	45
B	Document	77	78
C	Document	79	80
D	Document	80	81
E	Document	109	110
F	Document	110	111
G	8-pg Document	147	149
H	9-pg Document	149	

* * *

275-528

WILMINGTON SECURITIES INC.
RE:PITTSBURGH v BOLLO

10/17/74

[transcript pages 199-447]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

PITTSBURGH COKE & CHEMICAL CO.,

Plaintiff,

-against-

LOUIS J. BOLLO,

Defendant.

71-C-305

----------x

United States Courthouse
Brooklyn, New York

October 17, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

GENE RUDOLPH
OFFICIAL COURT REPORTER

Appearances:

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BY: ALLAN BLUMSTEIN, ESQ.
ANTHONY M. RADICE, ESQ.

THE CLERK: Case on trial, Pittsburgh Coke & Chemical Company v. Louis J. Bollo.

All parties are present, your Honor.

MR. WILLIAMS: Good morning.

MR. BLUMSTEIN: Your Honor, before we begin, may I inquire about the possibility of going forward tomorrow? I understand there is some possibility.

THE COURT: Yes, we could, if that's --

MR. WILLIAMS: Could we go on tomorrow morning?

THE COURT: Yes. I would have to interrupt for one short motion and two sentences which would not take too much time and then we'd have the afternoon until 4:15. So I am perfectly willing.

MR. BLUMSTEIN: Your Honor, there is one possible problem. I don't think it's going to arise because I don't think we will get that far. But our expert witness, on the basis of advice I gave to him earlier that we would not be sitting on Friday, has made certain plans which he cannot change.

I don't think there is any reasonable chance we will get to him tomorrow afternoon but I just want to advise you of that fact.

THE COURT: I see. I would imagine that probably you are likely to use up the balance of today

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and --

MR. WILLIAMS: I will use up the balance of today. But I would expect counsel to start his case tomorrow.

THE COURT: Tomorrow. Do you have anybody you could put on?

MR. BLUMSTEIN: Tomorrow, yes, surely.

THE COURT: All right.

I don't think it is a problem.

MR. WILLIAMS: I think we can go on a full day and then wind up on Monday.

THE COURT: Right.

MR. WILLIAMS: Your Honor, one matter of housekeeping. Yesterday an exhibit was marked Plaintiff's Exhibit 12 and there was an illegible original from which this typewritten copy was made. And I think we -- counsel agree this original should be in evidence.

MR. BLUMSTEIN: I would think so.

MR. WILLIAMS: Could you mark it 12A?

THE CLERK: Sure.

MR. WILLIAMS: 12A.

THE CLERK: So marked.

(So marked 12A.)

THE COURT: This was what you had handed me?

MR. WILLIAMS: Yes.

THE COURT: Do you want to have this one marked?

MR. WILLIAMS: No. This is the one we want marked. This is the original from which this was taken.

THE COURT: Yes. In other words, the copy of it has been --

MR. WILLIAMS: That is right.

So that is now 12A.

THE CLERK: Right. 12A in evidence.

Okay, Mr. Williams.

MR. WILLIAMS: Thank you.

Mr. Jerry Bollo, will you take the stand, please.

(continued next page.)

J E R O M E J. B O L L O , having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

THE CLERK: You are still under oath, Mr. Bollo.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. WILLIAMS: (Cont.)

xxxx Q When we concluded the session yesterday, I had shown you an exhibit, Plaintiff's Exhibit 16 for identification and I ask you -- this is with respect to Bendix Navigation & Control - and I ask you what that exhibit represents?

A This is an exhibit that was prepared at my direction, showing the gross sales volume for Bendix Navigation & Controls for the periods of 1965 through 1968.

MR. WILLIAMS: I think you have this, Judge. I think I handed you one.

THE COURT: Yes.

MR. WILLIAMS: 16?

THE COURT: 16, I have it.

A (Continuing) As well as the respective percentage of total sales that represent -- represented by these sales, these product sales.

Q But in 1965, what were the gross sales of Bendix Navigation & Control Parts?

A $501,000.

Q And by 1968, what were the gross sales?

A $1,692,000.

Q And in 1965, what was the percentage of the gross sales of Bendix Navigation & Control Parts, as compared with the total sales of Standard?

A $501,000, in 1965, represented 8.5 percent of total sales.

Q And in 1968, what percentage of the total sales of Standard were the gross sales of Bendix Navigation &Control Parts?

A $1,692,000 represented 18.6 percent of the total sales in 1968.

(continued next page.)

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DIRECT EXAMINATION

BY MR. WILLIAMS: (Cont'd.)

Q I offer this in evidence.

MR. BLUMSTEIN: Your Honor, just one question. I take it that the selection of the years 1965 through 1968 was done at your request, Mr. Williams.

MR. WILLIAMS: Yes.

MR. BLUMSTEIN: Again subject to checking the accuracy, I have no objection.

THE COURT: All right.

THE CLERK: May I have it, Mr. Williams, in order to mark your original?

MR. WILLIAMS: Yes.

THE CLERK: Plaintiff's Exhibit No. 16 now marked in evidence.

(So marked)

BY MR. WILLIAMS:

Q What discount rate did Bendix Navigation & Control extend to Standard prior to April, 1968?

A They extended a discount on both units and spare parts of 50 per cent.

Q I show you --

Mr. Clerk, would you mark for identification this letter dated April 1, 1968?

THE CLERK: Yes, Mr. Williams.

MR. FOSTER: An extra copy for the Court.

THE CLERK: A three-page document marked for identification as Plaintiff's Exhbit No. 17.

(So marked)

MR. WILLIAMS: A copy for the Court.

BY MR. WILLIAMS:

Q I show you Plaintiff's Exhibit for identification No. 17. Would you tell us whether you have seen that letter before?

A Yes, I have.

Q Was that received by Standard Aircraft?

A Yes, it was.

Q And can -- would you tell us, please, whether a copy of that letter was seen by Mr. Louis Bollo?

A Yes, it was.

MR. WILLIAMS: I offer it in evidence.

MR. BLUMSTEIN: May I ask one question, your Honor?

At the bottom, Mr. Bollo, there is a handwritten note, 4, 15. I think it says Xerox to D&R; is that your handwriting?

THE WITNESS: May I see it again?

MR. BLUMSTEIN: Sure.

THE WITNESS: I think it is but I am not positive.

MR. WILLIAMS: Use this copy. It is the same.

MR. BLUMSTEIN: All right. I hope so.

THE WITNESS: No, that is not my handwriting.

MR. BLUMSTEIN: Do you know whose handwriting that is?

A That would probably be my secretary's.

MR. BLUMSTEIN: Can you tell me who -- what the initials stand for, JJD?

THE WITNESS: JJD would be John J. Davis, JER would be J. E. Rushia.

BY MR. WILLIAMS:

Q JB or JER, can you tell?

A It's a JER.

Q But you think that is still John Rushia?

A Joseph E. Rushia.

Q Joseph E. Rushia?

A Yes.

MR. BLUMSTEIN: I have no objection, your Honor.

THE CLERK: Plaintiff's Exhibit 17 now marked in evidence.

(So marked)

MR. WILLIAMS: Your Honor, I would like to read a part of this letter, which you notice is dated April 1, 1968, which was -- which was several months prior to the signing of the agreement. The agreement to purchase the stock was December 20, 1968. I read the fourth paragraph. This is a letter from Bendix Navigation & Control Division to Mr. J. Bollo of Standard Aircraft Equipment Company.

"We find it necessary that to support these efforts, we must revise our end item discount schedule. Effective May 1, 1968, all commercial end items will be quoted to you on a list less 42.5 per cent basis with the airline net at list less 40 per cent."

I pause there.

BY MR. WILLIAMS:

Q Would you tell us, please, in layman's language, what that meant by way of discount and what profit that left you in dealing with the airlines?

A May I have a copy of this in front of me, please?

Q Yes, of course. Here you are.

A Right.

Q Explain that to his Honor.

A It had to be the practice of the Navigation & Control Division to extend a discount to us, to Standard

Aircraft, of 50 per cent. Sale on units, I am referring to specifically. Sale of units in turn to the airlines was at list less 40 per cent.

Q That is, sale by --

A Standard Aircraft or any other distributors. The suggested resale discount, the airlines customer was list less 40 per cent.

fls.

(Continued on next page.)

1 J. Bollo - direct

DIRECT EXAMINATION

BY MR. WILLIAMS (Cont'd):

A (Continuing) What this in effect did was eliminate the possibility of Standard Aircraft being involved in the sale of units to the airlines --

MR. BLUMSTEIN: Your Honor, I think Mr. Bollo is characterizing the document. The document talks about a reduction in discount. What impact that has is, I think, a matter for you to decide, based on the facts as they are going to be developed.

The question was: What does this mean?

MR. WILLIAMS: If your Honor please --

THEWITNESS: I was answering.

MR. WILLIAMS: I want him to explain that this indeed eliminated the profit to Standard because it reduced it from -- as I understand it -- 50 per cent to 42.5 per cent and the sale of the airlines, according to this, is at a discount of 40 per cent?

THE WITNESS: Yes.

MR. WILLIAMS. Which left Standard 2.5 per cent profit.

MR. BLUMSTEIN: All right. That's --

THE COURT: Let me put it this way.

I agree, it requires explanation. Do I understand

you are objecting to the explanation or just the way he's going about it?

MR. BLUMSTEIN: I'm not objecting to the explanation, your Honor. The prior discount being 50 and now being 42.5. But what the --

THE COURT: The effect?

MR. BLUMSTEIN: The impact.

THE COURT: What the impact or effect is --

MR. BLUMSTEIN: Yes.

THE COURT: --should be explained because it isn't readily apparent to me, what it is, based on the prior statement of 50 per cent.

Assuming when it was 50 per cent, it was listed less 40 to the airlines then?

THE WITNESS: That's correct.

MR. BLUMSTEIN: So there was a spread of ten --

THE COURT: So a spread of 10 per cent has been reduced -- would assume it to be 2 1/2 per cent. I think that's what --

BY MR. WILLIAMS:

Q Is that correct, Mr. Bollo?

A That's correct.

MR. BLUMSTEIN: All right.

THE COURT: That's what I thought.

MR. BLUMSTEIN: Yes.

THE COURT: The purport of the testimony was, I do agree, he was going about it in a perhaps more thorough way. Butwhat was the net result?

THE WITNESS: That was the nett result.

MR. WILLIAMS: That was the intent of my question, to bring out that explanation, which has to be made at some point.

THE COURT: All right.

BY MR. WILLIAMS:

Q I read the next paragraph in full on the second page:

"May I point out that this discount schedule covers initial provisioning as well as follow-on spares for all commercial end items. We are encouraging all the airline customers to do their intial provisioning on end-item spars through our distributors.

"We conservatively estimate that on the 747 alone that there is a market potential from 1975 of over $10,000,000. I believe this is quite an incentive for a distributor to get in with his airline customer and back him up with the support he expects."

Did you discuss this letter with your brother, Mr. Louis Bollo?

A Yes, I did.

Q And what did you say to him and what did he say to you?

MR. WILLIAMS: Excuse me. I offer this in evidence, the letter.

THE COURT: All right. Wait a minute.

THE CLERK: It's already in evidence.

THE COURT: I believe it has been marked in evidence, yes.

Q What did you say to your brother and what did he say to you?

A The import of this change I -- we discussed. I talked about it from one viewpoint and I will limit myself to that viewpoint.

The sale of units by Standard Aircraft was not a major factor at this point in time. It was to become important with the provisioning of the second generation aircraft.

May I say that in a different way? If you look at the sales by Standard Aircraft of navigation and controls for 1968, and the years preceding, unit sales, the end item, was a minor part of the sales in this product line.

Q Is this what you discussed with your --

MR. BLUMSTEIN: I --

MR. WILLIAMS: Just a moment, please.

MR. BLUMSTEIN: Sorry.

Q Is this what you discussed with your brother?

A Yes, it is what I discussed.

Q And did you say that to him or did he say that to you?

A I said -- well, I'm paraphrasing it now obviously.

Q I understand.

A What I led to in the question I asked was, with the reduction in discount, would we be allowed, would I have his permission to extend a discount of 40 per cent to the airlines in their provisioning program to gain the follow-on spare part business.

That was the critical aspect of interest to me in this letter.

Q And what did your brother say in answer to your question?

A The answer was affirmative. He said yes, we could. But he wanted to keep track of what we were doing. In other words, who we were offering this type of incentive to.

This is not a subject that can be fully understood in one or two sentences.

Q I understand that. At the moment -- we'll try

to understand it as we go along, but at the moment I asked you only of your discussion with your brother.

A Fine.

Q Have you finished that?

A Yes, I have.

MR. WILLIAMS: Would you mark this, Mr. Clerk?

THE CLERK: Yes, Mr. Williams.

A one-page document marked for identification as Plaintiff's Exhibit 18.

(So marked.)

MR. WILLIAMS: This is for the Court.

THE CLERK: Thank you.

BY MR. WILLIAMS:

Q I show you Plaintiff's Exhibit 18 for Identification and I ask you if you have seen that before.

A Yes, I have. This again is an illustration that was prepared at my direction.

Q And what does it illustrate, what does it purport to illustrate?

A What it does -- shows is the reduction in profitability on the sale of units resulting from the change previously discussed. It reduced the margin of profit from 16.7 per cent to 4.2 per cent effective May 1, 1968.

Q Now, before we go through this whole chart, I

think I'd better offer it into evidence, your Honor.

THE COURT: All right.

MR. WILLIAMS: I offer it in evidence.

He can testify from it further, if you prefer.

MR. BLUMSTEIN: I don't think I have an objection, but I would like to ask one question.

What does the expression "Without cash discount" mean, Mr. Bollo?

THE WITNESS: It was our -- the practice of Standard Aircraft to extend to the airlines a 2 per cent, 10-day cash discount. Bendix did not extend a cash discount either to Standard Aircraft or to the airlines if the airlines chose to place this order direct.

MR. BLUMSTEIN: I see.

THE WITNESS: So it gave us a 2 per cent advantage with the airline.

MR. BLUMSTEIN: So actually what you are saying is, you're illustrating here the --

THE WITNESS: Increased impact.

MR. BLUMSTEIN: The matters are described without the cash discount and with the cash discount.

THE WITNESS: That's right.

MR. BLUMSTEIN: Again, subject to checking the mathematics, your Honor, I have no objection.

DIRECT EXAMINATION

BY MR. WILLIAMS (Continued):

Q Now using this chart which was prepared under your direction, would you start with -- would you explain it to the Court, starting with Column A, which is list price. Assuming a list price of $1000 and what it -- what your profit was before May 1, 1968, what your profit was after May 1, 1968?

A Assuming a unit both before and after May 1, 1968, with a list price of $1,000, prior to 19 -- to May 1, 1968, our cost was $500. That would be list less 50 percent.

Q That's in Column B?

A Column B.

Column C shows the net cost to our airline customer of $600.

Q That's what you sold it?

A Sold it to the airline for. We, Standard Aircraft.

The gross dollar profit on that sale ~~of~~ is $100, which is 16 -- a gross margin of 16.7 percent.

Q That's a margin of profit on the sale of 16.7 percent?

A That's correct. Dividing the -- the $100 by the $600.

Q Right.

A Carrying it over into Columns F, G and H, shows the effect of the extension of the 2 percent cash discount if such cash discount was taken by the airline. Our profit would be reduced to $88, or a margin of 15 percent.

Q After -- take the second line, after May 1, 1968, and tell the Court what the effect was of the new --

A The list price of $1,000 is the same. Our cost increased from $500 to $575, as shown in Column B. The customers' cost, the airline cost, remained at $600.

Column D shows that our profit was $25, or reduced by $75.

The margin of profit, the $25 in relation to the selling price, is 4.2 percent.

Continuing over into the cash discount columns, F, G and H, the profit was further reduced to $13, or 2.2 percent.

MR. WILLIAMS: I offer this in evidence.

MR. BLUMSTEIN: It already is.

THE COURT: Yes, it's been marked.

THE CLERK: I haven't marked it yet, your Honor.

MR. WILLIAMS: Please mark it.

THE CLERK: Plaintiff's Exhibit #18 now marked

in evidence.

(So marked.)

THE COURT: Mr. Williams, may I inquire whether this did in fact take effect?

THE WITNESS: Yes, it did.

THE COURT: It did take effect?

THE WITNESS: Yes.

Q Was this a temporary reduction?

A No; it was a permanent reduction.

Q Was anyone in First Grant told about this?

A I do not know.

Q Did you tell them?

A I did not.

Q Do you know whether your brother told them?

A I do not know.

Q Now, what -- I come to Bendix Energy Controls as against navigation & control. What products did Bendix Energy Controls produce?

A Fuel metering, or if you will, carburetor parts and landing gear parts, wheels and brakes.

Q How much business did Standard do with Bendix Energy Controls?

A At what period of time?

Q Well, let me -- you're quite right.

Would you mark this, please?

THE CLERK: Yes.

MR. WILLIAMS: That's 19, I think.

THE CLERK: Yes. A one-page document marked for identification as Plaintiff's Exhibit #19.

(So marked.)

MR. WILLIAMS: A copy for the Court.

THE CLERK: Yes.

BY MR. WILLIAMS:

Q I show you Plaintiff's Exhibit 19 and ask you if you have seen that before?

A Yes, I have.

Q What is it?

A It's a chart showing the gross sales for Bendix Energy Controls for the period 1965 through 1968.

Q Does this accurately set forth the gross dollar sales for those years?

A Yes, it does.

Q Prior to '68?

A Yes, it does.

Q What does the final column show?

A The percentage that these sales represented of total sales in the respective years, ranging from 20.3 percent, in 1965, to 19.4 percent in 1968.

MR. WILLIAMS: I offer it in evidence.

MR. BLUMSTEIN: Mr. Williams, again I ask whom the years were selected by you; is that correct?

MR. WILLIAMS: Yes.

MR. BLUMSTEIN: Subject to checking the numbers, I have no objection.

MR. WILLIAMS: Received in evidence.

THE CLERK: Plaintiff's Exhibit #19 now marked in evidence.

(So marked.)

Q What discount rate did Bendix Energy Controls Division extend to Standard prior to October 30, 1968?

A Sixty percent.

MR. WILLIAMS: Mr. Clerk, would you mark for identification this letter dated October 30, 1968?

THE CLERK: Right.

MR. WILLIAMS: That's Plaintiff's Exhibit 20.

THE CLERK: That is correct.

MR. WILLIAMS: For identification.

THE CLERK: Correct. A one-page document marked for identification as Plaintiff's Exhibit #20.

(So marked.)

THE COURT: Was 19 marked in evidence?

THE CLERK: Yes, your Honor.

THE COURT: It has been marked?

THE CLERK: It was, your Honor.

BY MR. WILLIAMS:

Q I show you Plaintiff's Exhibit 20 for identification. Have you seen this letter before?

A Yes, I have.

Q When did you see it?

A Roughly, the date as shown, within a few days of that, which would be the --

Q Did you discuss this letter with Mr. Bollo, Louis Bollo?

A Yes, I did. This letter --

Q I notice the letter is addressed to him. Did he show it to you first or did you show it to him?

A He sent this letter, routed this letter to me with a note that is shown on the bottom here, t o see him on this. Quotes, see me on this.

MR. WILLIAMS: I offer it in evidence.

MR. BLUMSTEIN: No objection.

THE CLERK: Plaintiff's Exhibit #20 now marked in evidence.

(So marked.)

(Continued next page.)

DIRECT EXAMINATION

BY MR. WILLIAMS: (Cont'd.)

MR. WILLIAMS: Your Honor, may I read a part of this letter? It is addressed to Standard Aircraft Equipment Company, Inc, Garden City, October 30, 1968.

This, your Honor, I remind you was about two months before the agreement was signed.

"Attention Mr. Louis Bollo: Subject: Change in discount, effective January 1, 1969.

"Gentlemen:

"Purchase orders dated after December 31, 1968 will reflect a discount of list less 54 per cent for rotors, stators and linings. All other parts whether for the propulsion control or energy absorption will be handled at the list less 60 per cent discount historically extended to our distributors."

Then at the bottom is a notation which you have already referred to, "See me on this. LJB."

Whose handwriting is that?

A My brother Louis'.

Q Did you see your brother on this?

A Yes, I did.

Q What did you say to your brother or what did your brother say to you about this letter from Bendix

Energy Controls?

A We both read the letter and the statement he made referring to Paragraph 2 was, "This is the bulk of the product line. They are really hitting us hard."

Q Is that all of the discussion you remember or was there any further discussion?

A There was further discussion. Mr. Rushia was called into this informal meeting to discuss the impact of this change from an inventory control viewpoint.

MR. WILLIAMS: Will you mark this for identification, please.

THE CLERK: Plaintiff's exhibit 21 for identification, a one-page document.

(So marked)

Q I show you Plaintiff's Exhibit 21 for identification and I ask you if you have seen that before?

A Yes, I have. Again, this is an illustration that was prepared at my direction to show the impact of this change following December 31, 1968.

Q What percentage of the energy control products sold through Standard, did rotors, stators and linings constitute on an average?

A Between 80 and 85 per cent.

Q What effect would this have -- well, the effect

of this reduction in the discount rate you have attempted to illustrate through this exhibit, is that correct?

A Yes, I have.

MR. WILLIAMS: Offer it in evidence.

VOIR DIRE EXAMINATION

BY MR. BLUMSTEIN:

Q The phrased on top "Without cash discount" and "with 2 per cent cash discount". They mean the same thing as they did on the prior occasion?

A Yes, they did.

MR. BLUMSTEIN: I have no objection.

THE CLERK: Plaintiff's Exhibit No. 21 now marked in evidence.

(So marked)

BY MR. WILLIAMS:

Q Would you explain to the Court Plaintiff's Exhibit 21, starting with the discount prior to December 31, 1968, and going through the columns A through H?

A Prior to December 31, 1968, assuming a group of rotors, stators and linings had a list price of $1,000, our cost would have been $400, list less 60 per cent. We in turn sold to the airlines, as shown in column C, at $550, or list less 45 per cent.

The margin of profit on that sale, as shown

in column B, was $150, or, as shown in column E, a gross margin of 27.3 per cent.

Columns F, G and H show the further reduction in profit, $539, column F, was profit of $139, or a further reduction in the gross margin of 25.8 per cent if the airline customer involved took the cash discount.

Q Explain the second horizontal line, please, after December 31, 1968.

A The sequence is identical, with a list price of $1,000 our cost now increased to $460. The selling price -- our selling price to the airline remained at list less 45 per cent, or $550.

The margin of profit was $90, as shown in column D, which is a gross margin of 16.4 per cent, as shown in column E.

This is, in columns F, G and H, again, further reduction, assuming the airline took the cash discount, to $539, a gross profit of $79 or 14.7 per cent.

Q Again, was this a temporary reduction from Bendix Energy Controls?

A No, it was a permanent reduction.

MR. WILLIAMS: Would you mark this, please, for identification.

THE CLERK: A one-page document marked for

identification as Plaintiff's Exhibit No. 22.

(So marked)

Q I show you Plaintiff's Exhibit No. 22 for identification and I ask you whether you've seen that before?

A Yes, I have. It was prepared at my direction.

Q What is it designed to show?

A The impact of the reduction in discount effective December 31, 1968.

On the actual sales of Energy Controls Division of the Bendix Corporation, that is.

MR. WILLIAMS: I offer it in evidence, your Honor.

MR. BLUMSTEIN: Just one question by way of clarification.

VOIR DIRE EXAMINATION

BY MR. BLUMSTEIN:

Q You said actual impact of sales on the Energy & Controls, for the period 1965 through 1968. This doesn't show what happened after 1968, in terms of actual numbers, does it?

A No, it does not.

MR. BLUMSTEIN: I have no objection, your Honor, again subject to --

THE CLERK: Plaintiff's Exhibit No. 22 now

marked in evidence.

(So marked)

BY MR. WILLIAMS:

Q Would you explain this exhibit to the Court. Take the first line.

A I will. In 1968 sales for Energy Controls were $1,769,000. We enjoyed in 1968 our full margin of profit as shown in this illustration. Column C shows the gross margin of profit at $456,000.

Assuming sales at the same level thereafter, or in 1968, at the reduced discount, the impact of this change which was to become effective 12/31, would be a reduction in our gross profit, or a loss of profit of $157,000.

(Continued on next page.)

Q Now, the next three lines represent what profit you would have lost had you been operating under the new discount rate, is that it?

A In the years preceding, yes.

Q Actually, you didn't, you were being paid at the full rate?

A We enjoyed the discount -- the profitability as shown in columnC for all of these periods we enjoyed.

Q But this merely illustrates what would have happened had you operated under the new discount rate?

A This is correct.

MR. WILLIAMS: Would you mark for identification please, this document.

THE CLERK: A one-page document marked for identification as Plaintiff's Exhibit No. 23.

(So marked)

BY MR. WILLIAMS:

Q I show you Plaintiff's Exhibit 23 for identification, a letter dated April 11, 1969, addressed to Mr. Louis J. Bollo. Have you seen that before?

A Yes, I have.

Q When did you first see it?

A Within approximately a week after the date of April 11th, roughly between April -- around the 17th of

2

April.

Q Who showed it to you?

A My brother.

MR. WILLIAMS: I ~~have~~ offer this in evidence.

MR. BLUMSTEIN: No objection, your Honor.

THE CLERK: Plaintiff's Exhibit No. 23 now marked in evidence.

(So marked)

MR. WILLIAMS: Your Honor, I'd like to read the -- part of the last paragraph of this letter from from Mr. Louis B. Young of the Bendix Corporation, dated April 11, 1969, to Mr. Louis J. Bollo, president, Standard Aircraft Equipment Company, Inc.

"In light of these considerations, and with respect to our Navigation & Control Divisions' products for the 747, DC 10's and other new programs, we have decided that as of 1, May, 1969, we will serve the airline market on a factory direct basis rather than through our distributors."

Q Did you discuss this letter with your brother?

A Yes, I did.

Q What did your brother say to you and what you said to your brother?

A My statement was that, (1) As a result of this,

the Pan American agreement that we had already been operating under, had been awarded, that would be void and what should we do about the order we had from Pan Am, which were in the range of $725,000 initial provisioning units order that we had received.

His answer to it was, "What we did was academic, they were unprofitable in the first place, we would wait and see whether Pan Am wanted us to return the orders," but more important he talked about the fact that the whole support program on spare parts for the 747 was now a thing of the past; before we got started, it was stopped.

Q What happened to that Pan American contract?

A Within roughly a week of this -- I should say a month of this, we were asked by Pan American to return the order in question to Pan American so that they could place them directly with the manufacturer.

Q So you lost that business?

A Yes, we did.

Q Did you ever get it back?

A No.

Q Mr. McDowell, in the course of cross-examination, was shown Defendant's Exhibit B, which I will hand you, which is a telegram from Louis J. Bollo to Mr. McDowell. It is in evidence and it says, "Pleased to advise receipt of

contract from Eastern Airlines today to supply their Bendix wheel and brake requirements for the next two years." That was dated -- this was received August 1, 1969.

Q Did you know that your brother sent that telegram about this contract to Mr. McDowell?

A I don't recall knowing about it. The telegram, that is.

Q This refers to Eastern Airlines, your supplying their Bendix wheel and brake requirements for the next two years.

Will you tell us what happened after this telegram was sent to Mr. McDowell, whether that contract was carried through essentially to its completion with Eastern Airlines?

A It was carried through essentially to its completion with Eastern Airlines.

There was a matter of a few months toward the end of the contract where the total Bendix Airline program was cancelled, and in that tail end period, we sold off our residual inventory to Eastern. But essentially that contract was completed.

Q Now, at what discount rate, the new discount rate or the old discount rate?

A It was at the new discount rate and a degree

beyond that of our own choosing, we further reduced the margin profitability to gain the contract. We were in competition with two other distributors to gain this agreement.

Q So in effect, your profit margin, if any, was very small on this contract, is that what you are saying?

A Yes.

MR. BLUMSTEIN: Your Honor, there are facts and figures as to what the profit margin was. I hate to have a characterization --

fls.

(Continued on next page.)

MR. WILLIAMS: I am trying to find out.

MR. BLUMSTEIN: Could you find out.

Q Could you tell us what the profit margin on that whole contract was then?

A It would have been approximately two percent lower than anything reflected in the presentation I gave. In other words, we were talking about 14 percent gross margin it would have been in the area of about 12 percent.

Q Thank you. Another exhibit was shown to Mr. McDowell, and this is Defendant's Exhibit C. It appears to be a memorandum from the desk of Mr. McDowell, saying:

"Lou Bollo advised today that in addition to the Eastern business Standard has been awarded United's 747 wheel and brake business which will build gradually 1970-1971 to $1,500,000. Eastern will be $1,250,000 a year."

Will you tell us whether that contract, that projected business with United, ever took place.

A As stated here, the award was given to Standard. It never was implemented. We received -- we never did any business with United Airlines under this contract.

Q So you never made any money on that contract at all?

A No.

MR. WILLIAMS: I have no further questions of

this witness.

CROSS-EXAMINATION

BY MR. BLUMSTEIN:

Q Mr. Bollo, I think you said yesterday you came to work for Standard in 1948; is that correct?

A That's correct.

Q Could you tell me what you were doing immediately preceding that?

A Immediately preceding that I had been -- had a small business of my own, a television business. Television enlarger business, rather, for approximately one year.

Q What happened to that business?

A It was unsuccessful.

Q Was that located here in New York or someplace else?

A It was in New York, yes.

Q In 1948, is it correct that your brother hired or gave you your job at Standard?

A Yes, he did.

Q Have you ever owned any stock in Standard?

A Yes, I have and do.

Q Can you tell me something about your stock holdings, how much you owned, when you purchased it, when you sold it, how much you own today?

A Approximately 400 shares that were purchased at the time of the original issue, when the company went public.

Q 1959 I think that was.

A '59, yes.

Q What happened to those 400 shares?

A I still have them.

Q You still have them?

A Yes.

Q Do you recall that at the beginning of 1969 a tender offer for those shares was made by Pittsburgh Coke & Chemical, or First Grant Corporation?

A Yes, I do.

Q And that offer was made to you as well as to the other public stockholders?

A Yes, it was.

Q At what price was that offer made?

A $16 a share.

Q And I take it you determined not to accept that offer?

A Yes, I did.

THE COURT: Do you mean you did not, is that what you mean?

THE WITNESS: I did not take it. Regrettably,

your Honor.

Q I take it you continue to hold those shares today?

A Yes, I do.

Q I would like to turn to the subject of Whittaker, if I may, for a moment, Mr. Bollo.

The original relationship with Whittaker commenced in the year 1959, is that correct?

A That is correct.

Q Between 1959 and 1963, was Standard the exclusive distributor of Whittaker products?

Let me put it to you this way, pursuant to the contract between Standard and Whittaker did Standard have exclusive rights to the distribution of Whittaker products?

A No, we did not.

Q To your knowledge, did Whittaker have any other distributors besides Standard?

A No, they did not.

Q Were there any territorial restrictions in the Whittaker agreement as to where Standard could distribute Whittaker products?

A Yes, there were.

Q What were those territorial restrictions?

A The original agreement restricted us to the

Eastern half of the United States.

Q Do you have any knowledge as to how Whittaker products were distributed in the balance of the United States?

A Yes.

Q Would you tell us, please, what your knowledge is on that subject.

A By Whittaker direct.

Q And this is the period 1959 through 1963?

A Could you give me the time frame again, please?

Q 1959 through 1963.

A That is correct.

Q Now, am I correct, sir, that in 1963 Whittaker cancelled Standard's contract?

A Yes, you are.

MR. BLUMSTEIN: Mr. Clerk, will you mark this, please.

THE CLERK: A one-page document marked for Identification as Defendant's Exhibit I.

(So marked.)

Q Would you look at Defendant's Exhibit I, please, Mr. Bollo, and tell me if you can identify it.

A Yes, I can.

Q It is a letter you received from Mister --

A Dave Kimball, in the early part of January, 1963.

MR. BLUMSTEIN: I will offer it in evidence.

MR.WILLIAMS: No objection.

THE CLERK: Defendant's Exhibit I now marked in Evidence. It is a letter dated January 5, 1963.

MR. BLUMSTEIN: Can I have this marked, please.

THE CLERK: A two-page document marked for Identification as Defendant's Exhibit J.

(So marked.)

BY MR. BLUMSTEIN:

Q Now, would you look at Defendant's Exhibit J, Mr. Bollo, and see if you can identify that.

A Yes, I can.

Q Sir, is that the actual letter which cancelled the Whittaker contract?

A May I -- I think it is, but may I look at it?

Q Sure, take your time.

A Yes, it is.

MR. BLUMSTEIN: I offer it in evidence.

MR. WILLIAMS: No objection.

THE CLERK: Defendant's Exhibit J now marked in Evidence.

(So marked.)

BY MR. BLUMSTEIN:

Q Will you tell us, sir, what happened after receipt of that letter of cancellation in connection with your relations with Whittaker?

A I discussed the cancellation with my brother Lou in terms of the loss of sales that -- the effect of increased sales that this would have on Standard Aircraft, a nd I made a suggestion to him. That suggestion was that I telephone Dave Kimball and ask him if he would reconsider the cancellation and reinstate Standard Aircraft as the distributor.

Q By the way, let me ask you this: Had you received any advance notice prior to that letter of January 5, 1963, of any prospect of cancellation?

A No, we had not.

Q Would you continue with what you were saying. You said you had this conversation with your brother. What happened then?

A I told him that I thought we had nothing to lose by making the telephone call. He agreed. I made my telephone call, presented our case.

Dave Kimball said that he would consider the request, discuss it with his people. He did. Approximately three days later he telephoned me to say that they were going to reinstate

us, Standard Aircraft, as a distributor in the Eastern half of the United States.

What has to be taken into consideration here is the fact that during this period, at the time we received the letter of cancellation, we had been negotiating at their, Whittaker's request, a national distributor agreement.

Q So I take it you made this phone call to Mr. Kimball, and following that you were notified of a reinstatement of the contract?

A Yes, we were.

Q For the Eastern half of the United States?

A Yes.

Q Do you recall whether you or anyone else at Standard went out to the West Coast to see Mr. Kimball on the subject?

A We were prepared to go out, but it became unnecessary because --

Q It became unnecessary?

A Because the reversal, favorable decision came more rapidly than we had anticipated.

Q So did you then enter into a new distributorship arrangement with Whittaker, or was it just a withdrawal of the notice of cancellation?

A We continued under the old agreement until the

following summer.

Q That would be the summer of 1964?

A I think it would be the summer of '63.

Q Summer of '63?

A Right.

Q What happened in the summer of '63?

A In the summer of '63 we received an unexpected visit from one of the executives at Whittaker, Mr. Fred Space. He had with him the rough of a national distributor agreement, which our management group, consisting of my brother Lou, Ernie Rushia and I, reviewed with Fred Space, and that later developed within a short period into a successful national distributor contract.

Q So I take it your testimony is that sometime in 1963 you became a national distributor as opposed to just --

A Roughly July of 1963 was the meeting that I just discussed.

(Continued on next page.)

Q Now, thereafter, did you commence distribution of Whittaker products, sale of Whittaker products, in the entire United States?

A Yes, we did.

Q Were you the only distributor in the entire United States?

A Yes.

This is the point that I perhaps did not make clear before.

To answer your question, yes, we were the only distributor.

Q You said that from the period 1959 to 1963, Whittaker was distributing its parts in the western half of the United States?

A That is correct.

Q Did it discontinue distributing its parts after the execution of this national distributorship agreement?

A The effort, on their part, was decreased, but our agreement was non-exclusive; that is, Whittaker retained the right to sell the airline customers anywhere in the world in competition with us.

Q I see.

In fact, they did continue to sell to airlines

all over the world after 1963?

A Yes.

Q I think you testified yesterday that in 1966, Whittaker set up something called an aircraft components division; is that correct?

A Yes.

Q That was on the west coast?

A Yes.

Q It was at or about the same time that Standard opened a Los Angeles branch; is that correct?

A Yes.

Q With respect to Whittaker products, those two branches -- I'm sorry -- the Los Angeles branch and the aircraft components division were in direct competition?

A Yes.

Q Who did better, Standard or the aircraft components division?

A Standard.

Q Who was the head of the aircraft components division?

A Glen Danks.

Q Glen Danks.

Had he previously, prior to setting up of the aircraft components division, been in charge of the

distribution system that Whittaker had for its products?

A No, he had not been.

Q Do you know what he had been doing prior to 1966?

A Primarily -- immediately before establishing aircraft components division, he was in charge of their repair division.

Q I see.

In connection with the subject of whether Standard should be continued as a Whittaker distributor, did you understand that Danks had any authority to make such a decision?

A Do you mean did Danks have the authority to cancel Standard?

Q Correct.

A He did not.

Q He did not. He could not make any such policy determinations?

A No, he could not.

Q Indeed, from 1966 on, he was your competitor, so to speak, wasn't he?

A I can't hear you.

Q I'm sorry.

From 1966 on, he was your competitor, so to

speak?

A Yes, he was.

Q When I say "him," I don't mean him.

A Aircraft components division.

Q His company, yes.

I asked you yesterday about those two 1967 memoranda which came from Whittaker, and you told me that they came from Mr. Bohling and we discussed your -- how those memos were obtained, and what you knew about them?

A Yes.

Q Let me ask you this:

Did there actually come a point in time when Whittaker did cancel its distributorship agreement with Standard?

A Yes.

Q When was that, sir?

A The summer of 1970.

Q Summer of 1970?

A I think that date is accurate.

I'm talking about the notice of the cancellation, rather than the cancellation itself.

Q Yes, I understand that. We'll take that up in a minute.

A Yes.

Bollo-cross/Blumstein

MR. BLUMSTEIN: All right. May I have this marked, please?

THE CLERK: Yes.

A one-page document marked for identification as defendant's exhibit K.

(So marked.)

Q Let me show you defendant's exhibit K for identification and ask you, that is the notice of cancellation?

A Yes, it is.

Q That is dated July 27, 1970; is that correct?

A Yes, it is.

Q When, in fact, was the Whittaker agreement cancelled?

A May I have the letter again, please?

It was to have been cancelled February 1st, 1971.

Q But, in fact, it was not; is that correct?

A It was not.

MR. BLUMSTEIN: May I offer this in evidence?

MR. WILLIAMS: No objection.

THE CLERK: Defendant's exhibit K, now marked in evidence.

(So marked.)

MR. BLUMSTEIN: Could you mark this, please?

THE CLERK: Sure.

A one-page document marked for identification as defendant's exhibit L.

(So marked.)

Q Let me show you defendant's exhibit L and ask you to identify that, please?

A Yes, I can.

Q What is it, sir?

A It's a letter to Dynasciences, Robert L. Velez, from me, dated October 9, 1970.

Q It confirms that Standard will -- that the distributorship agreement will be continued until December 31, 1971?

A That is correct.

MR. BLUMSTEIN: I offer defendant's exhibit L.

MR. WILLIAMS: No objection.

THE CLERK: Defendant's exhibit L now in evidence.

(So marked.)

Q Yesterday , you testified about a telex, a TWX, I think you called it, which you received from Whittaker in February of 1969 concerning the 747's; is that correct?

A Yes.

Q After the receipt of that particular document and the date of termination of the Whittaker distributorship agreement, did you continue to distribute Whittaker products?

A On a reduced basis, yes.

Q But you did continue to distribute the products?

A Yes.

Q Actually, referring to the telex again, is it true that the contents of the telex became fairly common knowledge at Standard, shortly after it was received?

A Yes, I would agree.

Q There was no secret about it?

A No. It was a major change, and as such, the mid-management group knew of it in detail.

Q Who was the mid-management group?

A The branch managers. The management group, the branch managers.

Q Approximately how many people would that be?

A We're talking all told about a dozen people.

Q A dozen people. So there was no secret about it at Standard?

A No, it was not a secret.

Q Mr. Bollo, you were -- I think you were in

court yesterday when Mr. McDowell was testifying?

A Yes, I was.

Q Do you remember his testimony about a meeting he attended at Standard on May 9th, 1969?

A Yes, sir, I do.

Q I think his testimony was that his recollection was that you were present at that meeting?

A I don't know whether I was or not.

Q You're not sure?

A The reason I say that, I don't know whether I was on a European trip at that time. There were a series of meetings that fell at that time of the year that I missed because of European trips.

I'd have to check the minutes to answer your question with accuracy.

Q Well, let me show you Mr. McDowell's memorandum he made of that meeting, which is in evidence. It's plaintiff's exhibit 9, I think.

Have you seen this memorandum before?

A No, I have not.

Q You have not.

Well, could you turn to page two and look at that paragraph which begins at the bottom of the page, "Jerry Bollo who heads up sales."

A Yes.

Q Please just take a moment and read the balance of that paragraph, if you will.

A Aloud or quietly?

Q No, no. To yourself.

A Yes.

Q Now, does that refresh your recollection as to whether you were or were not present at the meeting?

A I would assume I was, reading that paragraph.

Q Actually, it refers to certain reports that you made?

A I may have prepared the reports, but not been there for the meeting. I'm not trying to evade the question.

Q I understand. I'm just trying to refresh your recollection to the point where you can tell me with any degree of certainty whether you were or were not present.

A I cannot tell you with a degree of certainty.

MR. BLUMSTEIN: Let me mark this document for identification.

THE CLERK: Yes, sir.

MR. BLUMSTEIN: Let's mark the original.

THE CLERK: A two-page document marked for identification as defendant's exhibit M.

(So marked.)

1 J. Bollo - cross

CROSS-EXAMINATION

BY MR. BLUMSTEIN (Cont'd):

Q Let me show you Defendant's Exhibit H. It is the minutes of the directors' meeting of May 9, 1969, and just directing your attention to the second paragraph.

A Yes.

Q Now, does that help in establishing affirmatively in your mind that you were present at the meeting with Mr. McDowell?

A No, it does not.

Q You still are not sure?

A I really am not.

Q Okay, fine.

MR. BLUMSTEIN: Let me offer Defendant's Exhibit M, if I may.

MR. WILLIAMS: No objection.

THE CLERK: Defendant's Exhibit M now marked in evidence.

(So marked.)

BY MR. BLUMSTEIN:

Q Do you have the McDowell memo?

A No.

Q Now, you did during this period of time make a trip to Europe; is that correct?

J. Bollo - cross

A Yes, I did.

Q And was that trip in connection with looking -- it had to do with the business of Standard?

A Yes, it did. That was the only purpose of the trip.

Q Tell me what you did on that trip? What the purpose of it was and what you accomplished?

A The purpose of the trip was to visit the home bases of the European airlines -- in Madrid on through all of Europe on up into the Scandinavian countries and the purpose was to get together with the purchasing personnel, on some occasions with the maintenance and engineering people, to foster the sale of the products that we were distributing.

Q And what was the result of the trip? What did you find out? Did you make any report to anyone at Standard concerning the outcome of the trip?

A Yes, I did.

Q What was the nature of that report?

A Are you talking about that specific trip in 1969?

Q Yes.

A Thatwas probably my third or fourth trip at that particular time.

Q Right.

A And our sales were increasing. The memo talks about the fact that the potential of the 747, the philisophical change of purchasing attitude on the part of the airlines moving back to Europe their purchasing rather than continuing it in New York, as many of them had, the nervousness, to quote Put's quotation of me here, in terms of all of the airlines in supporting the 747. It talks of the two consortiums that were formed in Europe and how they were growing in terms of unification of support by respective airlines in these particular groups.

The effect of it? We increased sales, there is no question about it. What other comment do you wish?

Q Well, did you come away from these trips and did you make any report concerning any efforts that might be undertaken to further increase sales?

A Yes, I did.

Q And tell us about that?

A As a result of -- I believe it was this trip, Swiss Air expressed interest in having us make a proposal for support of their wheel and brake requirements, Bendix Energy and Controls, on their fleet, DC-8's and Convair 880's.

We prepared that proposal in later months. It was a very difficult proposal. It required support, financial support, that is, of our parent company and that

support was not received.

Q Let me get that straight.

The proposal would have required additional financing?

A Yes, it would have.

Q And when you talk about the parent company, you mean Pittsburgh Coke?

A Pittsburgh Coke, yes.

Q Was Pittsburgh Coke asked to supply additional financing?

A They would have had to.

Q They would have had to?

A Yes.

Q But do you know whether they were requested to do so?

A Yes.

Q By whom?

A Lou Bollo.

Q when was that?

A In this time period of late 1969.

Q And do you know what the response was to that proposal?

Q The response was negative to the proposal.

Q Negative? It was turned down?

A Yes, it was.

Q I'm sorry. I interrupted you. You were telling me something else.

A I don't recall what it was.

Q All right. I take it that after reading this paragraph, it would be fair to say that it is a -- an accurate statement of what you might have reported at that meeting, if you had been there, concerning this European project?

A Yes.

Q Now, would you look at the next full paragraph, please?

A Which one are you referring to now?

Q The one that begins, "Someone at the meeting estimated." On page 3.

I'm sorry, right there. "Someone at the meeting estimated that when the 747's go into operation," etc.

A Yes.

Q Do you recall any such statements having been made at this May 9, 1969?

A I remember preparing the estimate of volume. I don't -- I can't contradict myself by saying that I remember making this statement.

Q I'm not asking you whether you made the statement.

My next question is: Did anybody make the statement?

A I don't know.

Q Do you know whether you made the statement?

A If I made the statement, it was not in this particular meeting.

Q It was not at this particular meeting?

A No. I don't recall making that statement, to answer your question.

Q And the answer is you don't recall anybody making that statement?

A That is true.

Q You talked about certain projections of volume that you had made which are referred to there.

A Yes.

Q Let me read the full sentence.

"Someone ~~at~~ in the meeting estimated that when the 747's go into operation, the amount of Bendix and Whittaker equipment on those airplanes may result in annual sales volume of $250,000-$300,000 per 747 for Standard Aircraft."

Now, did you make such a projection with respect to the 747's?

A This does not parallel the estimate that I developed. It's higher.

Bam3
r/nc

CROSS_EXAMINATION

BY MR. BLUMSTEIN: (Cont.)

Q It's higher?

A Yes.

Q Do you have any idea where this estimate came from?

A No, I don't.

THE COURT: May I inquire whether there would be any question in your mind that that paragraph was not linked to the prior paragraph?

A THE WITNESS: It would appear to be linked to the prior paragraph, yes.

MR. WILLIAMS: What was the answer, please?

THE COURT: He says it appears to be linked. Of course -- perhaps I should explain. What I mean is, is the discussion about 747s there pertaining to the European operation or are you talking about 747s generally, in the United States ?

THE WITNESS: Well, we're talking about 747s in this case, I have to assume the paragraph is linked and that we are talking about Europe. We didn't have that -- all 747s were not a potential for the company or a possibility, to rephrase that.

THE COURT: What about the sentence,"whether

this applies to all 747s or only to those in certain areas was not made clear"?

THE WITNESS: They --

THE COURT: Do you have any comment on that?

THE WITNESS: Whether -- whoever made the statement was referring to the basic customers we were supporting. That would be the European customers in this case.

THE COURT: Not -- we are not talking about--

THE WITNESS: We are not talking worldwide.

THE COURT: Not talking about domestic airlines at all.

THE WITNESS: Some domestic airlines, but in our -- your Honor, in our major trading area.

THE COURT: How would you define your major trading area?

THE WITNESS: On this particular product line, we're talking about our strongest branch location was Garden City, New York. In contrast to that, Los Angeles and San Francisco, the possibility of Bendix was reduced because competitive distributors had their home bases there.

Our major location of strength was New York and in this case talking about Bendix we would be in

particular referring to Europe here.

THE COURT: Are you implying that Garden City was foreign airline oriented because of the International Airport?

THE WITNESS: Garden -- New York, Garden City's major customers, airline customers are the European airlines. Their domestic airline business is considerably the minor part of their airline business.

THE COURT: I see. I'm sorry. I didn't mean to cut in on your time.

MR. BLUMSTEIN: My pleasure.

CROSS-EXAMINATION

BY MR. BLUMSTEIN: (Cont.)

Q Mr. Bollo, let me try one more time to see if I can get you to be positive about whether you were or were not at this May 9 meeting and let me refer to the deposition of you as a witness that was taken in this case.

You do recall that?

A Yes, I do.

Q All right.

Now --

MR. WILLIAMS: Page, please?

MR. BLUMSTEIN: Page 38.

MR. WILLIAMS: Thank you.

THE COURT: Excuse me.

What are we looking at now?

MR. BLUMSTEIN: Mr. Bollo's deposition in this action.

THE COURT: I'm sorry. All right.

MR. BLUMSTEIN: Page 38, beginning at line 20.

MR. WILLIAMS: Yes.

BY MR. BLUMSTEIN:

Q Now, were you asked these questions and did you give these answers?

"Were you at that meeting?" That's a reference to the annual meeting on May 9, 1969.

"Answer: Yes, I was.

"Question: I believe it also refers to a board meeting?

"Answer: Wait a minute. Yes.

"Question: Both at the annual meeting and the board -- both at the annual meeting and the board meeting?

"Answer: They were one and the same day. T They follow each other. I had to think because there was a meeting that I missed when I was in Europe."

Now, does that refresh your recollection in any

way?

A It conflicts with what I have just said. At that time I felt I felt I was at the meeting and I am not positive that I was now.

Q Okay.

You -- I think you mentioned in your direct testimony a cancellation of the Bendix distributorship; is that correct?

A Which distributorship are you referring to?

Q I think you talked about a cancellation of the entire Bendix distributorship.

Am I correct or am I in error?

A Are you talking about my testimony yesterday?

Q It was this morning, I think.

A You'll have to refresh my memory. I don't recall discussing -- the 1970, the September, 1970 cancellation of the entire program?

Q Well, I thought that's what you said. Maybe I'm in error. Was there a cancellation of the portion of the program in that period of time?

A Could we go back to my testimony and then I'll know exactly.

Q I think it will take a little while --

MR. WILLIAMS: I think he talked -- my

6 questions, if I recall correctly, were about the reduction in the discount rates. I don't recall.

MR. RADICE: He ultimately testified that the Whittaker and Eastern business to some extent was lost because of an -- ultimate cancellation.

THE WITNESS: Yes.

MR. BLUMSTEIN: The Eastern business.

MR. RADICE: Bendix Wheel and braking business.

THE WITNESS: Now, I know what you are referring to.

(continued next page.)

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J. Bollo-cross/

Q Could you tell me what you were referring to so that we have it clear?

A The Eastern Airlines wheel and brake contract ran for a period of two years. It ran beyond the termination day of the total Bendix airline program, which was -- the termination date was October 1, 1970.

Now, we were completing the tail end of the Eastern Airlines agreement at that point in time. We had roughly two months to run.

Q When you say, "cancellation of the entire Bendix program," are you referring to a cancellation of the standard distributorship or something else?

A I am referring to the cancellation by Bendix of the total airline program. In other words, all of the divisions that had airline products that were cancelled effective October 1, 1970, which included the division in question, Energy Controls.

Q I understand that. But I am not clear, did they cancel the standard distributorships or did they just go out of business?

A They cancelled all distributors on October 1, 1970.

Q Prior to October 1, 1970, had any particular divisions of Bendix cancelled any of their distributorship

agreements with Standard?

A Prior to October --

Q 1, 1970, when you say they just cancelled all distributorships?

A They cancelled the airline portion of product lines, does that make it clear?

Q My question is quite different:

Prior to October 1, 1970, had any division of Bendix cancelled its distributorship agreement with Standard?

A In total?

Q In total.

A Not that I recall. Parts, yes, portions of product lines, yes.

Q Well --

A Navigation and controls, I have to go back and take a look at that.

MR. BLUMSTEIN: We will mark this. I will let you look at it and we will see if we can get it clarified.

THE CLERK: One page document marked for identification as defendant's exhibit N.

(So marked.)

Q Let me show you defendant's exhibit N. Do

you recall whether you ever saw that letter before?

A Yes, I did.

Q Well let me ask you this question:

Having looked at this letter, can you tell me what its significance is?

A The significance of this letter is that the majority of Bendix Divisions that had product lines sold to the airlines -- the airline portion of those product lines was cancelled.

There are 10 divisions. You have to take each division on an individual basis to measure the impact of that cancellation.

Q What about navigation and control division?

A Navigation and controls division was totally cancelled.

MR. BLUMSTEIN: I will offer this in evidence.

MR. WILLIAM: No objection.

THE CLERK: Defendant's exhibit N now marked in evidence.

(So marked.)

Q In the years 1968 and 1969, Mr. Bollo, did you have occasion to meet representatives of First Grant Corporation and Pittsburgh Coke?

A Yes.

Q Can you tell me the names of those representatives, the persons you met?

A In 1968 . don't recall meeting any of them. In the mid to latter part of 1969 I met Mr. McDowell, Mr. Stoll, Fred Kirby; those would be the principals that I recall meeting. George Melgard.

Q Did you ever have a conversation with your brother in which he suggested to you that if any questions were asked of you by representatives of Pittsburgh Coke, you should not answer them truthfully and honestly?

A NØ.

Q Did he ever speak to you at all about what you should or should not say in any communications with representatives of Pittsburgh Coke?

A Yes.

Q What did he say?

A At our directors meetings and other meetings that were held in Pittsburgh, on several occasions he reviewed the subjects -- the agenda, subjects to be discussed, and we, that is, Mr. Rushia and myself, were directed to limit our discussions to those topics.

Q Did he ever suggest to you that if they requested a document from you, you should withhold that document from them?

A No , he didn't direct me to withhold it from them. He directed me to clear any such requests through him.

Q Did you receive any such requests?

A No.

Q You never did?

A No.

MR. BLUMSTEIN: I have no further questions.

Excuse me, I'm sorry.

Q You referred to certain meetings in Pittsburgh, am I correct?

A Yes.

Q Board of Directors meetings in Pittsburgh?

A I think one was a director's meeting, one was at a meeting of the executive committee of the board.

Q Those meetings were after September of 1969; is that correct?

A Yes.

MR. BLUMSTEIN: I have no further questions.

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q Introducing you, qualifying you, I forgot to ask, if -- is there an association of distributors, aircraft distributors?

A Yes, there is.

J. Bollo-redirect

Q What is it called, please?

A The Aviation Distributors and Manufacturers Association, who are headquartered in Philadelphia, Pennsylvania.

Q Were you ever an officer or director of that organization?

A Not an officer, but I was a director.

Q For how many years?

A Three years.

Q During your direct examination, your attention was called to the Whittaker agreement which was, I believe, continued until December 31, 1971. Would you tell us whether that was continued at the same discount rate or reduced discount rate or what is the situation with the -- with respect to that?

A It was at a reduced rate -- reduced discount rate of 10 percent.

Q What did that represent in the way of profit to Standard?

A It wasn't profitable.

MR. WILLIAMS: I have no further questions.

RECROSS EXAMINATION

BY MR. BLUMSTEIN:

Q Mr. Bollo, that reduced discount rate was

after the notice of cancellation in 1970, is that correct?

A Yes.

Q Up until 1970, the discount rate continued unchanged?

A Yes.

Q The only effect would have been the cancellation of the 747 program.

Q I am asking you now just about the discount rate on the products that you were selling.

A That's the discount rate.

MR. BLUMSTEIN: Thank you.

MR. WILLIAMS: That's all, unless the Court has questions?

THE COURT: I have none.

MR. WILLIAMS: Thank you.

(Witness excused.)

MR. WILLIAMS: Mr. Rushia.

J O S E P H E R N E S T R U S H I A, called as a witness, having first been duly sworn by the Clerk of the Court, testified as follows:

MR. WILLIAMS: Your Honor, I have an expert witness here. He is a little hard of hearing. Some of his testimony will be based on testimony by Mr. Rushia. May I ask that he sit in this jury box so he

Rushia-direct

can hear Mr. Rushia?

MR. BLUMSTEIN: I have no objection.

THE COURT: He may.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q By whom are you employed?

A Standard Aircraft Equipment, Inc.

Q How long have you been employed by Standard?

A 25 years.

Q What is your current position at Standard?

A Vice President of material.

Q What functions did you perform in the period 1961 to 1969?

A I was director of material.

Q And as such, what did you do?

A I was in charge of purchasing and inventory.

Q Was one of your jobs maintaining adequate inventories?

A Yes.

Q To whom did you report during that period?

A Mr. Bollo, Louis Bollo.

Q Was it part of your job to write off inventory?

A Yes, it was.

Q And would you tell the Court what the process

was with respect to writing off inventory, that is, when did you do it and how did you do it?

A Well, most of our inventory write-offs were done at the end of the ~~physical~~ fiscal year. The process was to thumb through our index cards, but first of all, may I say that I did this under the direction of Mr. Bollo.

Q All right.

What directions did Mr. Louis Bollo give you?

A At the end of our physical inventory, or early in the following year, he would give me a figure to write off.

Q When you say he would give you a figure to write off, you mean a dollar figure to write off?

A A dollar figure.

Q And do you know how he arrived at that dollar figure?

A I do not.

Q Did he discuss how he arrived at the dollar figure with you?

A Notwith me.

Q Did you furnish him any inventory cards or records on the basis of which he would decide what dollar figure to ask you to write off?

A No.

Q What was the policy, if you know, behind the write off of inventory?

A Well, I don't know of any policy. I do know that I followed a rule, that in arriving at those figures I would thumb through the cards and write off anything that had not sold for a period of two years or more.

Q Did you write off inventory, dead stock inventory, in every year?

A No.

Q Do you remember what years you did write off dead stock inventory?

A When you are saying in every year, at the end of a fiscal year, I did not write off. There were probably other kinds of write-offs such as obsolescence that was created by obsolete aircraft themselves or CAB type of bulletins.

In this case, this material was written off at the time, but no record was kept of it.

MR. WILLIAMS: Would you mark as plaintiff's exhibit for identification this batch of papers, which is labled 1962.

THE CLERK: A 7 page document marked for identification as plaintiff's exhibit number 24.

(So marked.)

MR. WILLIAMS: That plaintiff's exhibit 24 is marked December 31, 1962 inventory. Would you mark a folder containing sheets of paper marked 1964 inventory, please?

THE CLERK: Defendant's exhibit 25 for identification.

(So marked.)

THE CLERK: It is 17 pages ~~documents~~ and a folder which I marked as exhibit number 25.

MR. WILLIAMS: Would you please mark for identification as plaintiff's exhibit 26 a document which is marked December 31, 1965.

THE CLERK: A folder with various documents in it marked for identification as plaintiff's exhibit 26.

(So marked.)

MR. WILLIAMS: These papers are stapled together.

Please mark for identification plaintiff's exhibit 27, which is entitled, "Recap of December 31, 1967 Write-off."

THE COURT: It is a printout, isn't it?

MR. WILLIAMS: They are printouts, yes, computer printouts.

THE CLERK: So marked as plaintiff's exhibit number 27 for identification.

(So marked.)

MR. WILLIAM: Your Honor, I am not going to go through all these papers, but these represent, I believe, the inventory write-offs in the years in question. At least they will be the basis for my questions.

BY MR. WILLIAMS:

Q I show you plaintiff's exhibit 24 for identification, which is entitled "Inventory December 31, 1962."

Will you tell me if you have seen those papers before?

A Yes, I have.

Q Will you tell the Court what they are?

A Well, the first sheet is a recap of the inventory write-off for the year ending December 31, 1962. The following sheets are the actual part numbers and their value that were written off.

Q Can you tell us how much inventory was written off in that year 1962?

A $10,000.03.

Q And can you tell us how you arrived at the figure of $10,000.03?

A I was given the figure by Mr. Bollo.

Q Did that represent all of the inventory which had not been sold or with respect to which there had been no inquiries for two years?

A No.

Q When you got that figure from Mr. Bollo, would you tell the Court precisely what you did with your inventory cards?

A I went through certain portions of our inventory cards, I went through the weatherhead section and the testco section, and by that time I had arrived at the dollar value I was looking for.

Q What did you do when you arrived at the dollar figure of $10,000.03?

A I listed them as you see here and I turned the list over to the accounting department.

Q Do I understand there was a balance of inventory that was more than two years old which you did not write off?

A There was a balance of inventory that I did not check.

Q You didn't check it all?

A I didn't check it all.

Q Was there inventory there which was more than

two years old?

A Yes.

Q And these are the papers which you used in your figures?

A Yes.

MR. WILLIAMS: I offer it in evidence, your Honor.

MR. BLUMSTEIN: No objection.

THE CLERK: Plaintiff's exhibit number 24 now marked in evidence.

(So marked.)

Q Was there any write-off of inventory at all in the year 1963?

A Not at the end of the fiscal year in this manner. There were probably inventories written off through obsolescence by the manufacturer of the items, or through obsolescence because of CAB bulletins and so forth.

We did not keep a record of those, but we did knock them off the record as they occurred.

Q That is during the year from time to time?

A During the year.

Q Was there any review at the end of 1963 of inventory which had not moved for more than two years or with respect to which there had been no inquiries?

A No.

MR. BLUMSTEIN: Do you mean a review by Mr. Rushia?

MR. WILLIAMS: Yes.

Q Was there a write-off by anybody else that you know of?

A Not that I know of.

Q And who told you not to make any inventory write-off in the year 1963, as you did in 1962?

A I don't believe anybody told me not to write it off, but the lack of instructions was the information I needed not to write-off.

THE COURT: Do you mean to say that since there were no instructions to write off, you didn't do it?

THE WITNESS: That's right.

THE COURT: I see.

Q Would you look at plaintiff's exhibit 25 for identification, please, and tell us what that is?

A The first sheet is a recap of the write-off for the year ending December 31, 1964.

Q Whose handwriting is that?

A Mine.

Q Would you tell us how much inventory was written off in the year 1964?

A $21,600.02.

Q How did you come to that figure of $21,600.02?

A The figure as it shows here was not given to me that way, but it was given to me as a round figure.

Q What round figure was given to you, can you remember?

A It probably was around $21,000.

Q Who gave you that figure?

A Mr. Bollo.

Q As far as you know, did that figure have any relationship to the obsolete inventory? By that I mean which had been there for two years or more without sale or without any inquiries having been made as to it?

MR. BLUMSTEIN: May I hear that question again?

MR. WILLIAMS: Read it.

(Question read.)

MR. BLUMSTEIN: I don't know what that question means, your Honor.

THE COURT: Let's see if the witness knows what it means.

THE WITNESS: No, I was going to ask you the same thing. I was going to say do you mean --

THE COURT: There is unanimous consent to

reframe the question.

Q I refer to dead stock.

A You mean in the total inventory that Standard Aircraft had?

Q Yes.

A No, it did not represent the whole thing.

Q Would you tell us what procedure you followed then in 1964 when you were given a round figure by Mr. Bollo?

A I proceeded to thumb the index cards for our product code 011, which was the Bendix energy controls, and I also did the same thing for product code 140, which was the weatherhead.

Q You called those --

MR. BLUMSTEIN: Whittaker or weatherhead?

THE WITNESS: Weatherhead.

Q Did you look at any other code numbers -- I take it these are code numbers, and the code numbers represent suppliers?

A Right.

Q Did you in writing off inventory, even look at any other code numbers?

A No.

Q What did you do when you got to $21,600.02?

A I stopped thumbing and listed what I had come

up with, and again turned the list over to the accounting department.

(continued next page.)

Q Did you report this to Mr. Louis Bollo, exactly what you were doing? Did you tell him you had followed his instructions?

A Yes, yes.

Q Let's take the next year. I believe it's 1965. Was there an inventory --

THE COURT: Just a moment. Are you going to offer this one in evidence?

MR. WILLIAMS: Yes. I'm sorry, your Honor. I do offer it in evidence.

THE COURT: Is there any objection, Mr. Blumstein?

MR. BLUMSTEIN: No, your Honor.

THE COURT: All right.

THE CLERK: Plaintiff's Exhibit No. 25 now marked in Evidence.

(So marked.)

Q Would you look at Exhibit 26 for Identification and tell us what that is?

A It's the -- first page again is a re-cap of the write-off effective for the year December 31 or ending December 31, 1965.

Q Who made that calculation or who made those figures?

A I did.

Q They are on slips of paper?

A Well, here (indicating) are the figures I am referring to.

Q This is in your handwriting?

A Yes.

Q On the inventory sheets? Are those called inventory sheets?

A This first sheet is called a re-cap. Here is the inventory sheets.

Q All right. The first page is a re-cap and the following pages are --

A The write-off.

Q Actual write-offs?

A Right.

Q What are these slips of paper attached?

A They are merely adding machine tapes totalling up the values.

Q Would you tell us, did you do the adding machine work?

A No.

Q But these were done in your office?

A Under my direction, in the general office.

Q Can you tell from that exhibit exactly how much

inventory was written off in the year 1965?

A Yes; $60,100.

Q How did you arrive at the figure of $60,100 for inventory write-offs in the year 1965?

A For this one year, as I don't remember getting that figure from anyone -- I don't remember how I got it.

Q Does that figure of $60,100 represent a complete write-off of all dead stock? By that I mean stock that had been there for two years or over, without sale or inquiry?

A No.

Q It does not represent that?

A It does not.

Q Will you tell me what you did that year, with respect to write-off?

A That year I checked over one, two, three, four, five, six, seven, eight, nine -- I checked over 14 product codes of approximately 90 product codes that we were handling.

Q 14 out of 90 product codes. What happened to the other 76 product codes?

A I didn't check them.

Q Didn't even look at them?

A No.

Q If there had been dead stock represented by any of those 76 product codes, it was not written off; is that

it?

MR. BLUMSTEIN: Your Honor, I do want to object to the use of the term "dead stock." I think we know what we are talking about, inventory as to which there have been no sales or inquiries for two years.

MR. WILLIAMS: I don't want to repeat it every time. It's a shorthand expression that I am using, but I do mean what you said.

MR. BLUMSTEIN: All right. As long as we understand.

BY MR. WILLIAMS:

Q With respect to which there had been no sale within two years or no inquiry as to the product?

A Right.

MR. BLUMSTEIN: It has a certain connotation with which I think -- as to which I think there would be some dispute.

THE COURT: Let me ask you this. In the business was that a term in common use?

THE WITNESS: Dead and overstock is what we use.

THE COURT: Dead stock meant?

THE WITNESS: Dead stock meant that we wrote it off to zero value, and overstocked means that we

reserve monies to -- for future write-offs, and that could be reserved in any way. We could write off 75 percent of it or 25 percent of it, but it was never written to zero.

Dead stock means written down to zero value.

BY MR. WILLIAMS:

Q Well, was I correct in describing as dead stock those parts which had not been sold?

A Yes.

Q Within two years?

A Yes.

Q Or with respect to which there were no inquiries?

A Yes.

THE COURT: Which would be written down to zero value?

THE WITNESS: Zero value.

THE COURT: They would still continue to be held by the company; would they not? Or would they be junked?

THE WITNESS: No. They would be held by the company for a certain period and then junked.

THE COURT: Two more years?

THE WITNESS: A couple of more years, yes.

MR. WILLIAMS: I offer 26 in Evidence.

MR. BLUMSTEIN: No objection.

THE CLERK: Plaintiff's Exhibit No. 26 now marked in Evidence.

(So marked.)

BY MR. WILLIAMS:

Q You say that you don't remember who gave you the figure for 1965 to write off. Is there anybody else who was in the habit of giving you a figure?

A No.

Q To write off?

A No.

Q So even though you don't remember specifically, was this a figure you picked out yourself?

A No.

Q And no one else in the shop could do it except Lou Bollo; is that it?

A That's right.

Q Let's take the next exhibit, which is 27. How much was written -- I'm sorry.

Will you look at that sheaf of papers marked 27 for Identification.

A Yes.

Q Tell the Court what it is, please.

A This is a re-cap of the write-offs for the year ending December 31, 1967.

Q How much was written off that year?

A $19,627 and -- I'm sorry. It's $45,285.15.

Q Whose writing is this on the first page?

A Mine.

Q Recap. Who -- how did you arrive at the figure of $45,000 for the write-off in 1967?

A I was given that figure by Mr. Bollo. The figure he gave me was $45,000. The $285.15 just happened to be --

Q Did you ever discuss with Mr. Bollo whether this figure would correspond to what actually represented dead stock?

A No.

Q Did you ever argue it with him at all?

A No.

Q Or suggest it should be higher or lower?

A No.

Q Did he tell you why he picked these figures that you have just given us?

A No.

Q Tell us what you did in 1967 in order to write off $45,000.

A I went through the same process as the year before, only this time I reviewed six, rather, eight product codes.

Q Eight out of 90, did you say?

A Eight out of 90.

Q What were those? Can you tell us their -- or is it difficult?

A Yes. There were seven divisions of Bendix Corporation and Whittaker.

Q Then you stopped?

A And I stopped.

Q You didn't even look at the other product codes to see if there was so-called dead stock?

A No.

Q Mr. Rushia, were you present at the meeting at Whittaker in January, 1969?

A Yes.

Q When you and Mr. Bollo, Jerry Bollo, went to the Coast?

A Yes.

Q Who attended that meeting at Whittaker? Do you recall who was there?

A There was Harry White, Glen ~~Davis~~ Danks, Jerry Bollo, myself and I believe Fred Bohling was at that meeting. I am

not too sure. At that luncheon.

Q Do you remember what was said at the luncheon about -- what was said with respect to business of Standard?

A Well, this is when Harry White had advised us that we would -- that we would not be handling the valves for the second generation aircraft.

Q Did you hear him say that?

A Yes.

THE COURT: Did you say, "valves"?

THE WITNESS: Valves.

Q Do you remember anything else that was said at that meeting?

A Not in particular, no.

MR. WILLIAMS: Thank you.

You may inquire.

Did I forget something? I didn't put the last one in evidence. I offer it in evidence, your Honor, 27.

MR. BLUMSTEIN: No objection.

MR. WILLIAMS: Mark it, please.

THE COURT: Plaintiff's Exhibit No. 27 now marked in Evidence.

(So marked.)

MR. WILLIAMS: You may inquire.

CROSS-EXAMINATION

BY MR. BLUMSTEIN:

CROSS-EXAMINATION

BY MR. BLUMSTEIN:

Q Let me just ask you one quick question about the last meeting you discussed.

A May I say, though, that I am also a little hard of hearing so you might have to speak up a little bit.

Q I'll take my papers and I'll come over there and do the best I can.

A That's good. That's my good ear.

Q I just wanted to clarify -- can you hear me now?

A Yes.

(Continued on next page.)

Q I just wanted to clarify one thing with respect to this meeting at Whittaker that you just testified about.

You recall that statement by Mr. White?

A Yes.

Q And you have no recollection of anything else that happened at the meeting?

A Well, none in particular that,you know,I could bring out now.

Q Okay. Now, could you tell us, Mr. Rushia, -- first, let me ask you this: What is your educational background?

A High school.

Q High school? That's all?

A That's all.

Q Okay.

A I've educated myself after that.

Q Tell me a little --

A I've studied with my children and I have well educated children.

Q I see.

You've taken no post-graduate -- so-called adult education courses?

A No, I haven't.

I have read a lot and I've studied at home.

Q I see. Turning to the years 1968 and 1969, could you describe for me the kinds of records that were kept with respect to Standard's inventory?

A Yes. We kept a manual inventory control system. It was all manual, kept with cards. We had a card that represented every item that we had in our inventory. That was maintained daily. Updated daily. We made a sale, it was recorded on the card. If we made a purchase, it was recorded on the card.

Q Approximately how many such cards were there?

A About 50,000.

Q 50,000. They were maintained in the offices of Standard at Garden City; is that correct?

A Right. But not all of them were maintained there. Those that pertained to the Garden City branch were maintained there.

Q I see.

A Each branch had their own records.

Q I see.

So the cards at Garden City related to the Garden City branch?

A Right.

Q Now, during this period of time, were you

doing -- were you in the process of doing anything about computerizing the inventory system?

A We were in the process of converting our cards to a computer type operation. However, it wasn't a computer like we all consider it to be a computer. It was not where that the inventory was put in the computer. The inventory was on a magnetic card that could be read by a computer.

Q And printed out by the computer?

A Yes.

Q What stage had you reached, let's say, as of December 31, 1968, in this process?

A About 50 percent.

Q Fifty percent. Let's say by September 1, 1969, how much farther had you progressed?

A I don't think we had gone any further. The machine wasn't capable of taking any more.

Q I see.

A So we just stopped.

Q So at least 50 percent had been so converted and the other 50 percent had not?

A Yes.

Q Was this done -- well, let me ask you this: How did you -- the 50 percent that was

converted, did you just start working with product codes or cards or what?

A We did for a certain portion of it. We started from product code 1, which was the energy controls. We went through the Bendix divisions.

Q Right?

A Which included a Bendix product that was coded 121, which was a little out of order from the Bendix divisions. We put all of those and Whittaker and that was the extent of that conversion.

Q I think you said that in connection with this inventory writeoffs, in the years in which you did make writeoffs, Mr. Bollo gave you a number?

A Yes.

Q And you would then go to the cards and find items as to which there had been no sale for two years?

A Right.

Q Did the cards reflect whether there had been any inquiry during those two years for that item?

A No.

Q So you would not know from looking at the card whether there might have been an inquiry during that two-year period?

A No.

Q Okay.

How did you, in your own mind, decide which of the product codes you should go to? Bendix as opposed to Whittaker as opposed to Champion as opposed to anybody else?

A In my experience, daily working with ~~ing of~~ these, is that I could tell which ones actually needed the most cleaning out.

Q I see. It was not Mr. Bollo who told you where to go?

A No.

Q I think you said that the process of writing off inventory that had not sold for two years was something that you decided upon?

MR. WILLIAMS: I don't --

(continued next page.)

flws.

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CROSS-EXAMINATION

BY MR. BLUMSTEIN (Cont'd):

Q You selected the two-year period?

MR. WILLIAMS: I don't think he said that.

A No, I didn't say that. I used that.

Q You used that but it was your idea to look for inventory that didn't have sales within two years?

A Right.

Q As opposed to six months or one year?

A No, no. Actually this is a -- a letter that had been written back in 1953. Harry Wright, who was our vice-president then, had written up a procedure for writing off inventories.

Q In what year?

A In 1953.

Q Are you sure it was '53 and not '58 or '59?

A '53.

Q '53?

A Yes.

Q I see. He had written up a procedure?

A He had written up a procedure which spelled out this two-year rule that I was using. And this is why I used it.

Q I see. It was not pursuant to any instructions

from Mr. Bollo?

A No.

Q And you said before, I think, in your testimony that you might report to him that you had, with respect to inventory write-off, followed his instructions?

A I had found the amount of money that he was looking for.

Q That was the --

A That would be --

Q That would be the essence of your report?

A Yes.

MR. BLUMSTEIN: Have you got PX-26? That's the sixty thousand.

MR. FOSTER: Yes.

Q Just so that the record is fully -- is complete on this subject, Mr. Rushia, could you run through the product codes for Plaintiff's Exhibit 26 and tell me what that represented? I don't think we have that in the record.

A Yes. 011 represented energy controls.

021 represented navigation and controls.

031 represented electric power.

THE COURT: Electric --

THE WITNESS: Electric power.

THE COURT: Electric power.

THE WITNESS: Yes.

041 represented fluid power.

051 represents instrument and life.

061 represents -- this is the -- may I ask? This is the old Montrose Di..s.. Would somebody tell me what the new name is?

MR. FOSTER: Flight and Engine?

THE WITNESS: Flight and engine, yes.

And 071 is environmental science.

011 is the Pesco.

121 was the Scintilla Division of Bendix.

122, 124 and 125 were breakdowns of the same company, further broken down.

161 at that time was Aviation Electric and 200 was Miscellaneous Catchall.

MR. WILLIAMS: Would the Court note that the witness is not reading this? This is all from memory.

BY MR. BLUMSTEIN:

Q You do have an excellent memory, Mr. Rushia.

A Thank you.

Q Did you ever meet a gentleman from First Grant or Pittsburgh Coke by the name of Rodney Bonar, B-o-n-a-r?

A Yes.

Q You did. When did you meet him?

A I don't know the exact date but it was back at the -- in our office at the time this transaction was going on.

Q In the year 1968?

A I believe so.

Q You believe so?

A Yes. I don't know the exact date. I didn't keep a record on these meetings.

Q Was it in the year 1969?

A I'm not sure. You can keep giving me the dates and I'll still have to say I'm not sure.

Q All right. I'll stop.

Mr. Rushia, do you recall being deposed in this action on December 14, 1973? That was the second time?

A Yes.

Q You do. Do you recall being asked these questions and giving these answers?

MR. WILLIAMS: Page, please.

MR. BLUMSTEIN: I'm sorry. I want to see where I'm going to start.

Page 30, line 6.

MR. WILLIAMS: Thank you.

BY MR. BLUMSTEIN:

Q "Question: Can you name the individuals you

spoke to prior to September 18, 1969?

"Answer: Well, I would have spoken to Mr. McDowell and Mr. Gordon Rauck. But this was just a -- sort of an introduction to these people.

"Question: What about a Mr. Bonar?

"Answer: Mr. Bonar?

"Question: Bonar.

"Answer: I don't know him."

Mr. Foster, who is sitting here, spelled out the name for you. B-o-n-a-r.

"The Witness: No, I did not meet him."

Do you recall being asked those questions and giving those answers?

A Yes. Yes, I do, and I could not relate the name of Bonar with the person that I had met.

Q I see.

A And yesterday when I saw Mr. Bonar immediately it came back to me that that was the person.

Q I see.

A That I had met. In fact, I didn't even know that the person I had met and talked to even was with the Hillman Company.

Q I see. You did remember Mr. McDowell and Mr. Rauck by name but not Mr. Bonar?

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A Very well.

Q Now, you've testified that you cannot recall the date on which you met Mr. Bonar; correct?

A Yes.

(Continued on next page.)

Q And I tried a couple of ways to refresh you and it has not helped. Let me try one more: July 18, 1969.

A I don't recall.

Q What happened, if you can recall, when you met Mr. Bonar?

A I believe that he asked to see some of the records.

Q Right.

A And I took him into the general office and showed him our card record, which is this record that was half on magnetic card and half on a manual basis, and if I remember correctly, I think I gave him samples of the blank cards.

Q Anything else you remember?

A No.

Q What about then returning and having a conversation or being present while a conversation was going on between Mr. Louis Bollo and Mr. Bonar?

A I don't remember that.

Q Not at all?

A Not at all.

Q Are you telling me that you have no recollection of being present at such a conversation or that you have a recollection that no such conversation took place in your

presence?

A I have no recollection of being there.

Q You have no recollection of being there?

A That's right.

Q On that occasion when you did meet Mr. Bonar and showed him these cards, prior to that meeting did Mr. Bollo suggest to you that there were perhaps certain subjects you should not discuss with Mr. Bonar if he wanted information about them?

A No.

Q Did he -- when I say "he" I mean Mr. Louis Bollo -- suggest to you that you should in any way restrict Mr. Bonar's examination of the inventory cards, the records, et cetera?

A No.

Q And I take it you did not on your own?

A I beg your pardon?

Q You did not restrict him to anything?

A No.

Q Anything he wanted to see he saw?

A Right.

Q Apart from this meeting with Mr. Bonar, did you have any other direct contact with representatives of Pittsburgh Coke or First Grant?

A Not that I can recall.

Q Except perhaps some introductions, these are the people with Pittsburgh Coke?

A Yes.

Q That was about it?

A Yes.

Q By the way, these recaps I think and the documents that are introduced, you turned them over to the accounting department, is that correct?

A Right.

Q Do you know what happened to them thereafter?

A No.

Q Who saw them and who examined them?

A I know what happened after, they were returned to my files. They came from my files.

Q I see. But in between that period of time you don't know what happe d to them?

A No.

Q During the years in question, did Standard have an outside auditing firm?

A Yes.

Q What was the name of that firm?

A Byrnes and Baker.

Q Byrnes and Baker --

THE COURT: B-u-r-n-s?

MR. BLUMSTEIN: B-y-r-n-e-s.

Q Byrnes and Baker performed the year-end audit every year during this period of time?

A Yes.

Q Did you ever have any discussion with anyone at Byrnes and Baker concerning inventory?

A Yes.

Q Concerning inventory write-off policy?

A Not concerning write-off policy, no.

Q What were the discussions concerning inventory?

A Well, they were auditing our inventory and I was the one taking it, so there would have been a lot of discussions.

Q Was that concerned with the question of reconciling the physical inventory, things of that sort?

A Well, these were not all physical inventory that we are discussing. We only took about three physical inventories in Standard's existence. They were inventories that were taken from the inventory control cards.

Q I see. I take it that, from what you said before, that during the course of the year when obsolescent material and other material of that sort was written off, you kept no running record of the amount that you were writing

off?

A That's right.

Q What categories of material might be written off in that fashion, obsolescent material?

A Yes, and material that would go out of age; in other words, in aviation age is important.

Q Certain parts --

A Like rubber products, for instance, after a certain age they become unsaleable; you have to get them out of inventory.

Q What about damaged merchandise?

A Damaged material, the same way. Any item that becomes unsaleable. No matter how it got that way, we would drop it, it would be damaged, it would be out of age, it would be obsolete -- and by obsolete we mean it could not be used anywhere.

Q I didn't catch your last word.

A Anywhere, on any airplane.

Q Now Mr. Rushia, I think I am finished but I would like to consult with my colleagues for just a moment.

THE COURT: Could I have three minutes?

MR. BLUMSTEIN: Certainly.

THE COURT: You mentioned, you say, a lot of discussion with the accountants.

THE WITNESS: Yes.

THE COURT: Did you ever describe for them how you performed your function of write-offs?

THE WITNESS: No, I never did.

THE COURT: Never did. Did they ever ask you?

THE WITNESS: They never asked.

BY MR. BLUMSTEIN:

Q Just one question to get clarified, Mr. Rushia. You were asked by Mr. Williams about inventory write-offs for the years 1962 through 1968. In the prior years were there inventory write-offs of the kind that you described?

A No, not the year-end type inventories, no.

Q Excuse me?

A Not the year-end type.

Q So the first time you did that was the year 1962?

A 1962.

Q You're sure about that?

A Well, I haven't gotten any records that say different.

MR. BLUMSTEIN: I have no further questions.

THE COURT: Anything further with the witness, Mr. Williams?

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q Did you ever discuss the inventory write-off policy with Mr. Bonar?

A No.

Q Did you tell Mr. Bonar how you wrote off inventory in the years you did write off inventory?

A No.

MR. WILLIAMS: I have no further questions.

MR. BLUMSTEIN: No questions, your Honor.

THE COURT: All right, Mr. Rushia, you are excused.

(Witness excused.)

THE COURT: What is your pleasure?

MR. WILLIAMS: Could we break for lunch, your Honor, and then I will have another witness?

THE COURT: Return here at 2:00.

(Luncheon recess taken.)

(Continued next page.)

AFTERNOON SESSION

THE COURT: Good afternoon.

Mr. Williams, do you have another witness?

MR. WILLIAMS: Yes.

May I ask, your Honor, if my associate, Mr. James Foster, who is admitted in the Eastern District, may examine the next witness?

THE COURT: Certainly.

MR. FOSTER: Thank you, your Honor.

Mr. David Christopher.

DAVID WAYNE CHRISTOPHER, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FOSTER:

Q State your address for the record, Mr. Christopher.

A 31 Lebanon Hills Drive, Pittsburgh, Pennsylvan.

Q What was your education, sir?

A I was graduated from Pennsylvania State University with a Bachelor of Arts degree.

Q What is your profession?

A Certified public accountant.

Q By whom are you employed?

A I'm a partner with the firm of Price Waterhous

and Company.

Q Are you a member of any professional organizations?

A Yes. I'm a member of the American Institute of Certified Public Accountants and the Pennsylvania Institute of Certified Public Accountants.

Q Have you held any offices or served on any committees with those organizations?

A Yes. I've been a member of the Professional Ethics Committee of the Pennsylvania Institute and a past vice-president and member of the executive committee of the Pittsburgh chapter of the Pennsylvania Institute.

Q Have you written any publications on accounting

A Yes. Over the years, I've written probably half a dozen articles on various accounting subjects.

Q Those were published?

A Yes.

Q When was Price Waterhouse's first exposure to Standard Aircraft?

A It would have been late in 1969.

Q Is Price Waterhouse the auditors for Standard?

A Yes.

Q How long have they been the auditors for Standard?

A Beginning with the audit for the year ended December 31, 1970.

Q Has Price Waterhouse audited the annual financial statements for Standard since then?

A Yes.

Q What do you understand the term "dead stock" to mean?

A The term "dead stock," my understanding would be that that means inventory for which there have been no sales during the preceding two-year period.

Q When inventory becomes dead stock, how should an accountant treat it on the financial statements?

A I think it should be written off.

Q How does he do that?

A By reducing the assets or the inventory balances by a credit to inventories and by a charge to expense.

Q What effect would there be on the financial statements if there is dead stock and it isn't written off?

A I believe the assets of the company would be overstated and the expenses of the company would be understated.

Q Are you the partner of Price Waterhouse that supervises the annual audits of Standard?

A Yes.

Q Are you generally familiar with the nature of the assets and operations of Standard?

A Yes.

MR. FOSTER: I'd like marked for identification as Plaintiff's Exhibit 28 this document.

THE CLERK: Yes. A one-page document marked for identification as Plaintiff's Exhibit #28.

(So marked.)

MR. FOSTER: This is for the Court.

THE CLERK: Yes.

Q Did you prepare that document, Mr. Christopher?

A Yes, I did.

Q Could you explain it, please?

A It is a summary schedule that shows the total assets of Standard Aircraft Equipment Company in each of the years 1965 to 1969, the total inventories for the same period for each of the same years, and then in the final column shows the percentage of the total inventory to total assets in each of those years.

Q Where did you get the information contained in the chart?

A The dollar amounts for total assets and total inventories in each of the years were obtained from

the audit reports of Byrnes and Baker, certified public accountants for Standard Aircraft Equipment Company in those years.

The percentage figures in the last column are figures that I calculated.

MR. FOSTER: Your Honor, I move that this exhibit be introduced into evidence.

MR. BLUMSTEIN: May I ask one question, your Honor?

THE COURT: You may.

MR. BLUMSTEIN: How did you come to select the years 1965 through 1969?

MR. FOSTER: I instructed him to select those years.

MR. BLUMSTEIN: Thank you very much.

I have no objection, subject to just checking the numbers.

THE CLERK: May I have that sheet, please?

MR. FOSTER: Yes.

THE CLERK: Thank you.

Plaintiff's Exhibit #28 now marked in evidence.

(So marked.)

MR. FOSTER: Your Honor, I'd like to just briefly read parts of this into the record, in

capsulized form.

The left-hand column shows the annual total assets of Standard, as can be seen at -- it goes from 2.7 million to 6.3 million; the total inventories going from $1.6 million to $4.2 million.

The third column shows that the percentage of total assets consisting of inventory varies from 55 to 67 percent over this period.

BY MR. FOSTER:

Q Mr. Christopher, in a company such as this, how important is it that inventory be accurately accounted for?

A I believe it's extremely important.

Q Other than auditing the annual financial reports of Standard, what other projects has Price Waterhouse done concerning the inventory of Standard?

A In early 1971, we were engaged to make a special study and analysis of the Standard inventories, with the objective of determining how much dead stock there were in the 1970 inventories, and also directed toward determining how much of that dead stock would have become dead stock in each of the years preceding 1970.

Q How did you determine when a particular item would have become dead stock?

A By inspection of the individual inventory cards.

Q Was there any rule or formula for Standard that you used?

A Yes. We followed the so-called two year rule; that is, an item was considered to become dead stock when there had been no sales in the preceding two years. For example, the last sale of an item was in 1963. That would have been considered to be dead stock as of the end of 1965.

MR. FOSTER: I'd like to have marked for identification a document as Plaintiff's Exhibit 29.

THE CLERK: Yes. So marked as Plaintiff's Exhibit 29 for identification.

(So marked.)

MR. FOSTER: A copy for the Court.

Q Mr. Christopher, did you prepare that document?

A Yes, I did.

Q Could you explain it, please?

A It's a summary of the most probable value of inventory considered dead stock under application of the two-year rule that I referred to here earlier.

It shows for each of the years 1961 through 1969 the amount of inventory becoming dead stock in each of those years, and it also, in the last column, in the right-hand side, shows the balance of the dead stock as of

December 31 of each of those years.

Q Are these figures contained in this exhibit the results of the analysis that you had described a moment ago?

A Yes, they are.

MR. FOSTER: Your Honor, I move this exhibit be admitted into evidence.

MR. BLUMSTEIN: I have no objection.

THE CLERK: Plaintiff Exhibit 29 now marked in evidence.

(So marked.)

MR. BLUMSTEIN: May I? Excuse me. May I ask one question? Something I don't understand.

VOIR DIRE EXAMINATION

BY MR. BLUMSTEIN:

Q You say "summary of most probable value of inventory considered dead stock under application of the two-year rule." What does the expression "most probable value" mean?

A The analysis, the analysis work that was performed involved the use of statistical sampling techniques, and because it was a sampling plan that was used, the expression "most probable" means that the result of the study, that is, the most probable. Can't be 100 percent certain that is the

answer. That is the most probable amount.

Q Oh. Then I misunderstood perhaps the manner in which you arrived at these figures.

May I ask you, did you examine the inventory sales records for every item in inventory to arrive at these figures?

A No, we did not.

Q You examined a sample?

A That's correct.

Q Can you tell me how you determined what sample to examine?

A By use of statistical sampling techniques.

Q Can you tell me approximately how many inventory cards you did examine during the course of your analysis?

A I really can't. It would be a wild guess, I'm afraid, at this point.

Q You have no idea whatsoever?

A Again, accepting this as a very wide ballpark guess, I would say in the neighborhood of 500 to 1000 or -- somewhere in that neighborhood.

Q 500 to 1000 separate cards?

A That's correct.

Q How many cards were there for how many items?

A I believe approximately 50,000 cards.

Q Approximately 50,000 cards? And would you please tell me the statistical sampling techniques that you applied to select these 500 to 1000 cards?

A Well, the field was broken into strata, depending upon the value of the individual inventory items. For example, we considered the strata #1 to be all inventory items with a value, extended value in excess of $500. That was Strata 1.

Because of the large size of those items, they were examined 100 percent.

Then there would be a second strata of say from $200 to $500. And we went down into various strata, the final strata being those items with an extended value under $50.

Now, as I indicated, Strata #1, those items were extended -- an extended value over $500 were examined, the records were examined 100 percent.

The rest of the items, by use of a random number computer program, we statistically -- we had the computer, our computer really statistically select individual items within the total field of 50,000 minus whatever was in Strata 1 and those were the items we inspected.

Q Who supervised this particular project?

A Well, I was responsible for the over-all

supervision of it.

Q Who was it who determined what statistical sampling techniques should be used?

MR. WILLIAMS: I didn't hear you.

MR. BLUMSTEIN: Who determined what statistical sampling techniques should be used?

MR. WILLIAMS: Thank you.

A (Continuing) Well, I would say, I determined them after consultation with one of our statistical sampling experts.

Q Who was that, sir?

A His name is Mr. Oravek, Ralph Oravek.

Q Now, I take it that when you finished this particular project, you had quite a bit of backup data; didn't you?

A That's correct.

Q On the basis of that backup data, did you prepare any kind of formal report or anything of that sort?

A No.

Q Just have the backup data?

A We have the backup data, which is comprised of detail working papers and summary -- summaries of that and summary write-ups of what was done. I mean, the -- I guess to me a typical working paper file.

Q I understand.

Then I suppose from that you made a tabulation?

A That's correct.

Q Where are these working papers and back-up data, et cetera?

A Most of them are in our Pittsburgh office.

Q Most of them are in your Pittsburgh office?

A Yes.

(Continued next page.)

MR. BLUMSTEIN: Your Honor, this document I've never seen, the back-up data I've never seen.

I will object to the introduction of this document.

I will request that the back-up data be made available for our inspection. I think that until we can examine that data and look at the figures, we cannot make any possible determination as to the accuracy of the information and, indeed, this will probably interfere with my cross-examination of this witness.

MR. FOSTER: Your Honor, if I may be heard?

This case has been pending for several years now and they've been on notice for quite some time that we were going to call Price, Waterhouse as an accountant.

There are established procedures of discovery they could have utilized, and for reasons of their own they decided not to, and it is a rather late hour to want to delay things by asking for back-up data.

MR. BLUMSTEIN: We received --

THE COURT: Except let me say this. Was there prior notice of this particular document?

MR. FOSTER: We -- not of the document itself. We did describe the testimony that Price Waterhouse

was going to give in answers to interrogatories.

THE COURT: I see.

MR. BLUMSTEIN: May I read this to you, your Honor, the interrogatory answer that was given to us?

THE COURT: It's probably in here, isn't it? I could follow it better that way.

MR. BLUMSTEIN: It's answer to interrogatory set No. 2.

THE COURT: It is the original answer, not the supplemental? Is it? Original or supplemental?

MR. BLUMSTEIN: It's the original, except it's set No. 2.

THE COURT: Set No. 2. What page?

MR. BLUMSTEIN: I would ask your Honor to look at page 4, paragraph No. 5, also 6, which goes over to page 5.

THE COURT: Yes. I have it.

Well, have you seen it?

MR. FOSTER: Yes, I have, your Honor.

THE COURT: I cannot say that I feel that it really gives notice that this will be the result of the testimony.

The general rule is, as I believe you must be aware, any kind of schedule may be presented in court,

so long as the underlying material is available for examination to the other side.

I would feel that that rule should be applied in this instance. I do not know how feasible it is, whether by telephone call to Pittsburgh, is it?

THE WITNESS: Yes.

THE COURT: Someone can get on a plane and get here or not. Not necessarily to arrive today but tomorrow or something like that, with the material.

MR. FOSTER: Your Honor, would it be sufficient to ~~make~~ meet the request of counsel if we produce a summary of the analysis that was done showing the size of the sample and the method for --

MR. BLUMSTEIN: Your Honor, I must insist that I see all of the back-up data on this survey.

I was not aware until two minutes ago or three minutes ago that these figures were based on some sort of a sampling of the cards. I must see what was done.

MR. FOSTER: Let me suggest this then, your Honor. I know that we have at our offices some kind of memo explaining how this was done. I'm willing to submit that to Mr. Blumstein and to the Court, and if the Court feels that Mr. Blumstein seriously needs

more specifics than that, at that time we can reach a decision on that point.

MR. BLUMSTEIN: Well, I --

MR. FOSTER: I can get that to Mr. Blumstein later today.

MR. BLUMSTEIN: I am prepared to start in that fashion, your Honor. I don't know whether it would be sufficient. I haven't seen the memo.

THE COURT: You say you are?

MR. BLUMSTEIN: I am prepared to start my investigation by taking a look at the memo and seeing if it's -- if it satisfies me or not.

THE COURT: Is that available in court or will you have to call your office?

MR. FOSTER: It is in my offices.

THE COURT: I see. Could someone make a call to have it come up here?

MR. FOSTER: I think we can take care of that, your Honor, if you'll give me just a minute.

THE COURT: Right.

For the time being, I will reserve a ruling on your offer in evidence of Plaintiff's Exhibit 29 for Identification, but you may proceed with your examination of this witness.

MR. FOSTER: Thank you. I will do so, your Honor.

With your indulgence, I will question him on this exhibit subject to your later ruling.

THE COURT: Is there any objection to that?

MR. BLUMSTEIN: I have no objection to that, your Honor.

Except I think you have my copy.

THE COURT: Oh.

MR. RADICE: No.

MR. BLUMSTEIN: Fine. Thank you.

BY MR. FOSTER (Continuing):

Q Mr. Christopher, you said that Price Waterhouse conducts the annual audits of Standard?

A That's correct; since 1970.

Q Did they test the inventory? Do they currently test the inventory for dead stock?

A Yes, we do.

Q Do they use a -- Do they break the inventory down into strata, similar to the way that you just described for this study?

A Yes, although I don't believe that there is as extensive an evaluation of the many, many under $50 items as there were -- as there was in this special study.

Q So this is -- this special study then is, I guess, represents a deeper investigation than you normally do for an annual audit?

A I think that's true at the present time.

Q You have the exhibit in front of you?

A No.

Q I'd like to read just a few things from the exhibit to base my next questions. Apparently your analysis showed that the most probable value of inventory as dead stock at the end of 1964 was over $40,000, at the end of 1967 was over $183,000, at the end of 1968 was just over $291,000.

Now, was any of this dead stock that we are referring to here, that is tabulated in this table, written off prior to 1970?

A No.

Q If a two-year rule had been used consistently over the entire inventory during these years in the 60's, when would this dead stock have been written off?

A It would have been written off in each of the years as indicated in the middle column of the schedule. For example, in 1967, $76,258 would have been written off.

Q It has been stipulated in Plaintiff's Exhibit 1 that during the years 1962 to 1969 some items were written off during four of those years. Are any of those write-offs

included in these figures?

A No, they are not.

Q I note that your chart, Plaintiff's Exhibit 29, has over $126,000 in inventory becoming dead stock during 1969. Is there any way of estimating how much of that became dead stock before September 18, 1969?

A Yes. We could make such an estimate by determining the number of days prior to September 18, 1969 and then prorating that $126,000 on a daily basis over that portion of a year.

Q How many days were there in 1969 prior to September 18?

A 260.

Q What fraction would you use to do this prorating?

A It would be 260 three hundred sixty-fifths.

Q Applying that ratio to the inventory figure of 126,000 zero thirty-four, what figure did you come up with as the most probable value of inventory becoming dead stock in January 1, 1969, to September 18, 1969?

A $89,778.

MR. BLUMSTEIN: Could I have that number again?

THE WITNESS: $89,778.

MR. BLUMSTEIN: Thank you.

Q What is the total probable value of inventory

which became dead stock by use of the two-year rule from January 1, 1961 to September 18, 1969, which was not written off before 1970?

A $381,082.

Q Mr. Christopher, you were here this morning when Ernest Rushia testified, is that correct?

A That's correct.

Q Did you hear his testimony about the methodology that Standard used for writing off dead stock during this period?

A Yes, I did.

Q Is this methodology that he described an adequate way of accounting for inventory?

A I don't believe it is.

Q Why is that, sir?

A Well, I believe, as I understood the methodology that he described, that it did not represent a complete and thorough evaluation of the entire inventory for purposes of determining the amount to be written off.

Q Again considering that methodology, would you say that the financial statements of Standard Aircraft, assuming that they were based on inventory write-offs as Mr. Rushia described them, would you say that those statements had been prepared consistently with generally accepted accounting

principles?

A No, I do not believe they would have been prepared consistently with generally accepted accounting principles.

Q Why is that, sir?

A Well again, because I think that the generally accepted accounting principles would require a complete and thorough evaluation of the entire inventory and a write-off then based upon that complete and thorough evaluation.

Q Are you familiar with the term "lower of cost or market value" as applied to inventory?

A Yes, I am.

Q What does that term mean, sir?

A "Lower of cost or market," is one of the generally accepted accounting principles which is applied to inventories. Basically it's a rule that states that in the preparation of financial statements, inventory should be stated either at the company's cost for those inventories or, if the amount that will be realized from a third party upon sale of those inventories is lower or zero, the inventory should be stated at that lower amount.

(Continued on next page.)

Q If Standard used as their method of writing off inventory the methodology that Mr. Rushia described, are they ~~lower~~ -- valuing their inventory at the lower of cost or ~~to~~ market?

A I don't believe so.

Q Why is that?

A Because again, to use the words I used before, I think the failure to make a complete and thorough evaluation of the entire inventory to determine all of the dead stock obviously results in a failure to write down to the lower of cost or market the dead stock items that were not reviewed, evaluated and written off.

MR. FOSTER: Thank you, sir.

No further questions.

MR. BLUMSTEIN: I think I can move over here and make it easier for everybody, at least for the moment.

CROSS-EXAMINATION

BY MR. BLUMSTEIN:

Q Mr. Christopher, I take it you have during your career with Price Waterhouse operated out of the Pittsburgh office?

A That's correct.

Q By the way, how long have you been with Price

Waterhouse?

A Well, I began with Price Waterhouse in July of 1951 and have been there ever since, except for two years in the Army.

Q Have you ever had any previous accounting experience with a company in the business in which Standard was engaged?

A No.

Q I think you said that your first connection with this account was late in 1969; is that correct?

A That's correct.

Q What was the nature of that first connection?

A Byrnes and Baker, who were auditing financial statements of Standard for the year ended December 31, 1969, asked Price Waterhouse to provide some assistance in connection with their -- that examination.

More specifically, in years prior to 1969, Byrnes and Baker had -- had other accounting firms observe the physical inventories of the branches in other cities where Byrnes and Baker did not have their offices.

So in 1969 they asked us to observe those physical inventories of branches in other cities around the country, where there were no Brynes and Baker offices, since we had offices in many of those locations.

Q And you did so?

A Yes, we did.

Q During the year 1969, did you have any other connection with Standard?

A No. The branch work is the only connection that I know of.

Q How is it that Byrnes and Baker requested you to supervise the physical inventories at the branch offices?

A Well, because we were the auditors, of course, of Pittsburgh Coke and Chemical Company and because of the sale transaction, I guess they decided -- yes, I know they decided they should use Pittsburgh Coke's accountants to do that work.

Q At that time, to your knowledge, had it been decided that after 1969 Price Waterhouse would do the outside auditing work for Standard?

A I don't know whether it had been decided. I certainly had a very strong presumption that it would happen. Whether it was finally decided or not, I just --

Q In other words, you thought you were going to get the business?

A Yes.

Q Because of your relationship with Pittsburgh Coke?

A Right.

Q Do you recall when it was that it became official that you would become the auditors for Standard?

A No, I don't recall.

Q Would it have been some time in, say, 1970?

A Well, it would have had to have been sometime in 1970 because we did do the 1970 audit of Standard.

Q It would have had to have been prior to the time you started the 1970 audit, which might have been early in 1971 or perhaps late in 1970?

A Probably the latter part of 1970. We normally would do interim work.

Q Did you at that time or prior to that time have any discussions with any of the people at Byrnes and Baker who had previously worked on this account?

A At what point in time are you speaking of now?

Q Prior to the time when you actually became responsible for the work of Standard, did you have any such discussions?

A You're speaking of me personally now?

Q Yes sir.

A I have no recollection of any such discussions.

Q When I say "you" I mean you personally, subsequent thereto, have any such discussions?

A Yes.

Q When were those discussions?

A I had a telephone conversation with Mr. Baker, I believe, sometime in the spring of 19 -- late winter, early spring, somewhere in that period, in 1971.

Q Just that one telephone conversation?

A I think there was only one telephone conversation.

Q Did any of your associates at Price Waterhouse, to your knowledge, have any such discussions?

A I have the impression that the manager on the work did have one or more discussions sometime late 1969 to the latter part of 1970.

Q In connection with this study that you made which resulted in the chart that's been offered in evidence, you said that you were engaged in early 1971 to perform such a study; is that correct?

A That's correct.

Q I take it it would be beyond the course of your regular auditing duties for Standard? It was a special study, that's what I mean to say?

A That's correct.

Q Can you tell me, sir, who engaged you at Pittsburgh Coke or Standard to make that study?

A Well, it was actually the instructions to do

it were -- came from Pittsburgh Coke people. The specific individual who actually said "Go ahead and do it," I'm having trouble recalling, but it was definitely an official of Pittsburgh Coke and Chemical.

Q What were the nature of the instructions?

A Well, at the point in time that we received these instructions, of course, we -- we had already spent a very extensive amount of time performing the regular audit of the December 31, 1970 financial statements of Standard.

Q Right.

A And a very substantial part of that substantial time was spent on the inventory question and the question of, in the December 31, 1970 financial statements, how much of the inventory should be written off.

Q Okay.

A And I think it was -- the 1970 financial statements were finally issued were -- as I recall, something close to a million dollars in inventory being written off. I think it was that, really the audit work that was done up to that point, the conclusion that was reached in preparing the audit report itself on the 1970 financial statements that led to the meeting or at least contributed to some fairly high degree to a meeting which led to the special instructions to do the special analysis work.

Q Let me ask you this, with reference to Plaintiff's Exhibit 29 for identification, this schedule that we've been talking about. You have it in front of you.

I notice that the balance of -- what you call dead stock at the end of 1969 is $417,338; correct?

A Correct.

Q You tell me that your analysis or your audit in connection with the year 1970 suggested a write-off of one million dollars as being appropriate; correct? In excess of one million or something like that?

A Approximately one million.

Q Does that suggest that for the year 1970 you found dead -- material which became dead stock in excess of $500,000?

A No.

Q All right. Tell me how you got to the one million dollar figure?

A The one million dollar figure was a combination of dead stock -- was a write-off of both dead stock and excess stock.

Q I see.

A So the $400,000 -- the $417,000 here is only dead stock.

Of course there would have been additional

dead stock in 1970. The conbination of that plus the excess stock that was written off I think principally account for the difference.

Q I see.

Now you can -- you previously gave us your definition of "dead stock." I'll come back to that in a minute.

What do you mean by "excess stock"?

A "Excess stock" was quantities of inventory in excess of an estimated two-year supply. In other words, if you had 100 items on hand of part XYZ, if the preceding year's usage of that item or sales, sales of that item was 20, was assumed that a two-year requirement was 40, so that 60 of the 100 were excess stock.

Q And you wrote off the value of 60?

A That's correct.

Q Or lower of cost or market of 60?

A Yes.

Q You are not suggesting that you would throw away those 60 parts; would you?

A No.

Q Indeed, you are not even suggesting that in the third year another 20 might not be sold?

A I think you're suggesting that or you wouldn't

write them off.

Q What I am saying to you is, if you have sold 20 in one year and you're predicting sales of 20 for the next two years and you've still got 60 in stock, you're not suggesting that those 60 are never going to be sold?

A Well, I think you are or you won't write them off. Yes, you're suggesting that. That's the premise upon which the write-off is based.

Q I see.

So even though in year one you have sold 20 and even though you are projecting sales of 20 for year 2 and 20 for year 3 and therefore feel that you can only write off 60, you are suggesting that none of those 60 will be sold?

A I think, yes.

Q Yes?

A Yes.

Q Okay. Now --

A We are talking about excess stock now, not dead stock.

Q I understand.

Since I don't take shorthand, I'm -- I'd like you to repeat the dead stock definition for me again, please

A Dead stock represents inventory or an inventor

item for which there has been no sale in the preceding two years.

I think the illustration I used was if the last sale of a particular part was in 1963, it would be considered to be dead stock at the end of 1965.

Q I take it that you deemed it to be sound accounting practice to write off anything that fell within that definition of dead stock?

A That's correct.

Q Is that definition of dead stock something that you might apply across the board to any company's inventory?

A Well, I think ~~it is -- I think~~ it's the kind of procedure that is used in companies ~~who~~ which have repair parts inventories.

It would obviously ~~be in~~ not be applicable to a petroleum company but to a company with a substantial repair parts inventory I think, yes, it is.

Q I'm talking specifically about the two years, the two-year aspect of your definition. Would you apply that across the board to companies which are in that kind of business?

A I think it is a reasonable, good sound accounting method.

Q Right.

Is the definition of dead stock that you have given us some term of art in the accounting profession? If I picked up some textbook, would I find it there so defined?

A You mean, would you find a definition in an accounting textbook that says "dead stock is anything that hasn't been sold in the past two years"?

Q For a company which is in the business of the type that Standard is in?

A I doubt it. I don't know of any textbooks which I could direct you to.

Q So in -- let me ask you this. Since there are no textbooks from which the two-year period emerges, I want to know how you arrived at the two-year period?

A Well, I think the two-year -- of course, the two-year period was arrived at by the company, in the first place. I mean, the function of an auditor is to review and audit what the company does.

So this -- the two-year rule is not something we invented. It was a practice the company was following.

Q I see.

A Now, if you went into another company who used a 30-day rule, I think an auditor will say "Well, that's a

little ridiculous. That can't be appropriate."

Or somebody that was using a 20-year rule, the same answer.

Q What about a six months' rule?

A I think it would depend on the circumstances. I would think six months -- I've never seen a six months' rule used.

Q Have you ever seen it used in connection with any company in the aircraft parts business?

A Six months' rule?

Q Yes.

A If I've never seen it, I've never seen it.

Q Okay. You've never seen it at all?

A Right.

(Continued next page.)

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CROSS-EXAMINATION

BY MR. BLUMSTEIN: (Cont.)

Q What about a three-year rule instead of a two-year rule?

A I know of no instance where I've ever seen a three-year rule used.

Q Let me ask you this: What would you think about the appropriateness of a six-month rule?

A I think in the normal circumstance it sounds like too short a period to me.

Q It sounds like too short a period.

What about three years, does that sound like too ~~short~~ long a period?

A Again my answer is yes.

Q In your judgment --

THE COURT: Have you in other situations come across this two-year rule?

THE WITNESS: Yes.

Q Can you tell me those other situations?

MR. FOSTER: I would like to note that Mr. Christopher does not want to discuss the names of the clients in connection with this information because it's proprietary information of a client and it was provided to him on that type of basis.

Q Do you understand that the inventory writeoff policy is something you prefer not to discuss because it's confidential information as to the company?

A Yes.I think --

Q All right.

I take it from that that it is not information that is generally disclosed to the public in annual reports, financial statements and things like that.

MR. FOSTER: Are you asking about the particular companies that he has worked with or are you asking about companies in general?

MR. BLUMSTEIN: I am asking about companies in general, if he knows.

A My impression would be that it's not normally disclosed in public financial statements. I can't recall seeing anywhere it has been.

Q I will not ask you for the names of the companies but if you can give me some idea of the kinds of businesses they are in?

A Heavy equipment manufacturing with substantial repair parts inventories.

Q These are companies that manufacture heavy equipment and have in their inventories prepared parts for the heavy equipment that they manufacture.

A Correct.

THE COURT: How about automobile dealers?

THE WITNESS: Pardon?

THE COURT: How about automobile dealers?

THE WITNESS: I have no experience with that.

THE COURT: I meant new automobile distributors who have a repair parts department.

THE WITNESS: I have absolutely no experience in that field.

BY MR. BLUMSTEIN:

Q Just so I have it clear in my mind, it was Standard that determined that the writeoff policy should be based on a two-year period, that that policy was reported to you, you found it to be a reasonable policy in the circumstances and then applied it in your audit for the year 1970;is that the way it happened?

A That's correct.

Q Do you happen to know the -- I will withdraw that. You were talking about the effect on the financial statements of a company if dead stock is not properly written off, and I think you said that the assets are overstated and the expenses are understated.

Now, the assets,of course, appear on the balance

sheet of the company; is that correct?

A That is correct.

Q So in that sense the balance sheet of the company would show an excess net worth, correct?

A Correct.

Q The expenses, however, appear on the profit and loss statement, correct?

A Correct.

Q Now, what is the consequence of understating the expenses of a company on its profit and loss statement?

A You overstate the profit.

Q Is that the profit before taxes or after taxes?

A Both.

Q Well, what comes first on the profit and loss statement, profits before taxes; right?

A That comes before the profits after taxes, yes.

Q In other words, you say, here are my cost of sales, here are my expenses and here is what I can write off and you get your profit before taxes, right?

A Yes.

Q You calculate the amount of tax you are going to pay based on that number?

A That's correct.

Q If that number is overstated because you have not taken off any inventory writeoff, you'll be paying more taxes than you should; isn't that correct?

A That is correct.

Q And do you happen to know during the years in question what the tax rate was for Standard?

A No, I don't.

Q Am I correct that generally the tax rate for corporations in this country, Federal income rate, is 50 percent?

A Generally that is the percentage that is used, for the sake of generality, yes.

Q When you write off this inventory, of course, you don't -- let me ask you what is your understanding, you don't throw it away if it's not damaged or something like that?

A I think as Mr. -- that's what Mr. Rushia testified to this morning, yes.

Q The inventory writeoff as it appears as an expense on the profit and loss statement is something that you might call a non-cash item -- it does not in the year in which it is written off represent an actual expenditure of cash by the company as would, for example, salaries or

rent or something like that.

A That's true.

Q It's not exactly like, but it's sort of something like depreciation when you are dealing with a piece of real estate? I will withdraw that question.

With reference to that exhibit you have in front of you, Plaintiff's Exhibit 29, you were doing some mathematical calculations and prorating the dead stock number for 1969; is that correct?

A That's correct.

Q All you were doing there was just making a mathematical calculation?

A That's correct.

Q It was not based on any actual analysis of whether that mathematical calculation might or might not be totally accurate?

A It's truly a mathematical calculation.

Q By the way, have you read the deposition that was given by Mr. Louis Bollo in this case?

A No, sir.

Q You have not?

A Wait, excuse me. I think I did, yes. I'm sorry, that was sometime ago but I did.

Q Do you think you did?

A I'm sure now that I did. I answered too hastily. It was sometime ago when I read it.

Q A long time ago?

A Yes.

Q Do you recall the testimony that he gave in that deposition concerning the inventory writeoff methods and policies of Standard Aircraft during the years '62 through 1969?

A I have no specific recollection of it, no.

Q So your opinion as to the proper accounting practices or procedures with respect to Standard is based on Mr. Rushia's testimony which you heard this morning, correct?

A Would you --

Q Your knowledge of what Standard was doing during that period is based on what you heard Mr. Rushia say this morning?

A Would you repeat that question?

THE COURT: Would you read that.

(Record read.)

THE WITNESS: Well, you know, I can't say that what Mr. Rushia said this morning was something I had never heard before.

I mean, I've never heard it in that detail,

but it was not a completely new subject out of the blue.

I've heard discussions about the policy that was followed in the past.

BY MR. BLUMSTEIN:

Q I want to ask you about when and where you heard about that policy?

A I just can't specifically recall. It was sometime ago. I guess my impression would be that it may have been comments made to me by one of our staff members who's been involved in the audits of Standard since 1970.

That certainly is obviously a strong possibility. Our people spend a great deal of time at Standard, and that could be where I heard it. I mean, I just -- you know, it's nothing that particularly sticks in my mind that at some point in time somebody told me this.

Q I understand.

A My impression is that this wasn't something new to me.

Q I don't think it was something new to you, and I don't think that over lunch you determined that the accounting practices weren't sound. But what I'm trying to find out from you is when it was in time and how you learned of the practices as testified to by Mr. Rushia,

which you have also testified are not in accord with sound accounting principles, when and where.

Please, just be as specific as you can, if you don't remember, you don't remember.

A I'm afraid I can't be specific. I just don't remember.

Q You think it may have come from one of your staff people?

A I'm saying that's a possibility. Obviously, I said I read Mr. Bollo's deposition, if there are comments in there about it -- I don't remember if there are, but if there are, obviously, I must have known about it when I read that.

Q Is there any other possibility you can think of except this information you got from a member of your staff?

A It's not inconceivable that in conversations with counsel I may have -- there may have been comments about it then. I don't know.

Q Do you recall when it was that you were retained to be an expert witness in this case?

A Well, I think that was at the same time that we were engaged to do this special analysis, inventory analysis.

Q That was early in 1971.

Can you pin it down any more specifically than that?

A Well, I say early 1971. I think this special inventory analysis work was begun probably in May of 1971. It was obviously before that, and it was after we had done a substantial amount of the 1970 audit.

I would guesstimate in the first couple of months of 1971.

Q You said something before about the principle of evaluating inventory on the basis of lower of cost or market. I think you said that because there was no inventory writeoff of dead stock as to Standard that, therefore, it's inventories were not valued on the basis of lower of cost or market.

A That's correct.

Q Put the dead stock to the side for a moment. Let's talk about the live stock in the Standard inventory.

Based on what you know, was that live stock properly valued on the basis of lower or cost or market?

A At what period?

Q During the time period we have been talking about, 1965 through 1969.

A I don't know.

Q But you have no information to the contrary?

A No, I have no information to the contrary.

Q You have no information. It was not properly done, you don't know one way or the other?

A Yes, I just don't know one way or the other. We didn't audit those years.

Q During a period of inflation, let's say, when the price of everything is going up, and you have a company which has an inventory and that inventory is based on costs which may be a year old, two years old, three years old, whatever it may be, and during the period of time the cost of those items has risen so that if you had to replace them in inventory it would cost you more money, but the resale price has also risen so that the margin of profit remains the same -- are you following me?

A I think so.

Q -- does the principle of using the lower of cost or market result in an undervalued inventory?

A No.

Q It does not?

A It does not.

Q Let's take Standard, it's got a particular item in its inventory -- this will just be a hypothetical question -- which it purchased for ten cents from a supplier,

and that's its cost and it's carried on the books for ten cents.

The suggested selling price if fifteen cents. Now, that's in the year one. Year three it's still there at ten cents as cost. The price from the supplier has risen to twelve cents and the suggested retail price is seventeen cents, so that five cent differential is still there.

In terms of that item, which is actually in the inventory, and which now has a cost price of twelve cents, in accordance with sound accounting principles how should it be valued in terms of Standard's inventory?

A At its cost of ten cents.

Q You are acquainted with, I suppose, the concept of inventory turnover and examining a company's financial statements to discover how fast its inventory turns over?

A Yes, I am familiar with the concept of inventory turnover.

Q Now, as an accountant given the appropriate information, how do you determine what the inventory turnover rate is?

A You relate your turnover to your sales.

Q What numbers do you use, how do you go about it? Just as a technical matter.

A Inventory turnover is a phrase used to connote --

let's say you have a million dollars worth of inventories --

Q Correct.

A -- and your annual sales are $4,000,000, you would say you have an inventory turnover of four times per year. Your annual sales are four times the inventory balance, i.e., your inventory must turn over, you know, speaking now in broad generalities, four times a year.

Q I understand that.

The inventory that you look at, the inventory number, do you base that -- sales in 1963 are 4,000,000.

Where do you go to find out what the value of the inventory was, the December 31, 1962 or December 13, 1963 or what?

A You know, I suspect it depends on who is doing it. And at what point in time you are doing it and for what purpose.

Q I see.

But to get the inventory value you would go to the balance sheet, wouldn't you?

A Sure.

Q To get the sales you would go --

A To the income statement.

Q -- to the income statement?

A Yes.

MR. BLUMSTEIN: Your Honor, subject to whatever I may decide to do about the exhibit as to which you have reserved decision, I have no further questions of this witness.

MR. FOSTER: Your Honor, I have no further questions.

We have a memorandum explaining in brief form what Mr. Christopher's office has done and giving figures on the sample,size and number of items selected, which I now give Mr. Blumstein.

THE COURT: Why don't we take a ten-minute recess. I have another matter to deal with and I can deal with that, and you can have an opportunity to read that.

(Recess taken.)

THE COURT: All right, Mr. Blumstein, are you ready to proceed?

MR. BLUMSTEIN: Yes, your Honor. I read the memorandum which Mr. Foster referred to. I am afraid it is not terribly helpful because it really doesn't say very much more than what I have already learned from Mr. Christopher on the witness stand.

I was also given a sheaf a papers a few minutes ago which appears to be -- it is headed Standard Aircraft Equipment Co, Analysis of Inventory Activity File.

It consists of quite a number of schedules.

I don't know what it is. I would like to ask Mr. Christopher a few questions as to what it is.

THE COURT: I would think you should be entitled to do that, if he is familiar with it.

Does it appear to be Price Waterhouse worksheet?

MR. BLUMSTEIN: Yes. I also want to find out whether it is all of the backup data or whether there is more.

I am afraid in terms of trying to analyze it I can't possibly tell at this moment what is involved. I will look at it tonight --

THE COURT: I will say no one would expect you

to analyze it on the stop like that, and I am not altogether sure that that necessarily precludes the exhibit from coming into evidence.

If this material is identified as being substantially what you call the backup data, then your remedy is to have your expert review it and do whatever he can to present another viewpoint.

In other words, voir dire is designed to test, generally speaking, the authenticity, reliability of something that is being proferred as evidence.

What weight it has or what weight it should be given is the function of either cross-examination or refutation by other experts.

MR. BLUMSTEIN: I understand that.

THE COURT: I think you are entitled to ask the witness if there would be anything more at the home office which might be significant. But if that should be it, then I think its availability would prompt me to admit this exhibit subject to your right to show that it is really not entitled to any weight, if that should be the case.

MR. BLUMSTEIN: I do not take issue with that as an appropriate procedure.

Let me make one point, though; I do not have an accounting expert witness, your Honor, as we did not retain one because --

THE COURT: Where did I get the impression you did?

MR. BLUMSTEIN: Our witness is in the field of securities evaluation. He is an investment --

THE COURT: I thought it was at a morning meeting we had where we were talking about extra time to get an expert.

MR. BLUMSTEIN: He is an investment banker, he is not an accountant.

Not until today, knowing that I would be faced with this kind of material, I didn't feel that we had a need for an accounting expert witness.

THE COURT: Weren't you apprised that there was going to be an expert accounting witness?

MR. BLUMSTEIN: Yes.

MR. WILLIAMS: Yes, your Honor, we told him months ago we would have an accounting witness.

MR. ABRAMS: I am sorry, I don't mean to make it three on one, but we were told by them that they would have an accountant testify.

MR. BLUMSTEIN: As a fact witness.

MR. ABRAMS: That is contained in their answer to interrogatories.

THE COURT: All right, I won't hold it against Mr. Blumstein, but then you have a memorandum and you have this compilation of paper there which may or may not be backup, or all of it backup.

MR. BLUMSTEIN: I would like to right now just ask a few questions to find out something about this —

MR. WILLIAMS: Since we have been warned that Mr. Blumstein will not finish with this witness today, I have a witness whom we must finish with today, and I would like to interrupt the testimony of Mr. Christopher and put on our expert who has to get away.

THE COURT: Is this agreeable?

MR. BLUMSTEIN: I have no objection.

MR. WILLIAMS: Mr. Christopher can't be here tomorrow but he can be here on Monday. Do you think you can finish with him today?

MR. BLUMSTEIN: I cannot finish with him today.

MR. WILLIAMS: Then we would have to suggest he come back on Monday. In the meantime, we will put on another witness who has to leave tonight.

THE COURT: All right, I think that is a reasonable suggestion.

MR. WILLIAMS: You may decide you won't need him at all. In that event, if you let us know then we can excuse him.

MR. BLUMSTEIN: Can I spend a few minutes finding out what this is and what the backup data is so that between now and Monday we can --

THE COURT: Is this witness going to be very long?

MR. ABRAMS: I would say on direct a half hour.

THE COURT: You say you just have a few questions you would like to put to this witness now, is that it?

MR. BLUMSTEIN: Maybe five minutes.

THE COURT: All right, go ahead.

MR. BLUMSTEIN: May we mark this for identification?

THE CLERK: A volume of document clipped together marked for identification as Defendant's Exhibit O.

(So marked.)

BY MR. BLUMSTEIN:

Q Mr. Christopher, can you tell me what Defendant's Exhibit O is, please?

A This is a file of Price Waterhouse working papers that were created during the inventory analysis work that we discussed earlier; more specifically, file 2 of 17.

Q You mean there are 16 more such files?

A Yes sir.

Q Of backup data?

THE COURT: Would that be because each one pertained to a different branch?

THE WITNESS: Not necessarily, your Honor. I don't honestly recall -- some of the backup data that are in other files would be copies of the inventory records themselves; for example, and I don't recall what the rest of it may be, but that is our normal index -- two of 17 indicates there are 17 files in this subject area.

Q Can you look through that file and tell me what is in there, basically the kind of information that's in there?

A This, I think I would categorize, I would characterize this as one of the summary files, if not the summary file for which the rest of the files would provide further supporting detail for what is in here.

THE COURT: Is there anyway in which you can make up your mind right now?

THE WITNESS: I am a little bit puzzled why this is 2 of 17 instead of 1 of 17.

THE COURT: Oh, you mean number 2 of 17?

When you said originally one of 17 I thought you meant --

THE WITNESS: If it was one of 17 it would be the summary file. I don't recall what 1 is.

THE COURT: It is 1 of 17 but it is number 2?

THE WITNESS: Yes.

THE COURT: You can't, by going through it, make up your mind as to whether it might indeed be the summary of the other 16, or, let us put it this way, the end result of the data in the other 16?

THE WITNESS: Well, it is, your Honor, to the extent of this one schedule that is in front of the file. This is the summary schedule which is the next document behind Exhibit 29. This is the details of what appears on Exhibit 29.

THE COURT: I take it you have not had an opportunity to really see what is inside those covers?

MR. BLUMSTEIN: I have glanced at the schedules. Sometimes I wish I were an accountant,

but not today.

THE COURT: Presumably, if you return to Pittsburgh and look at the other 16 you could reach a firmer conclusion as to what if anything would be needed here to supplement that file?

THE WITNESS: Yes.

MR. BLUMSTEIN: I am afraid, your Honor, that I may want to see those other files, I don't know.

THE COURT: Maybe you can spend a weekend in Pittsburgh.

MR. WILLIAMS: Your Honor, they were on notice so long ago, and it was Judge Rifkind himself who said, "We know what the accountant is going to say, we don't want to take his deposition."

MR. BLUMSTEIN: The interrogatory answer states that this witness will be called as an expert witness, and this witness has testified in a factual manner.

MR. FOSTER: The complaint in this action makes clear that not enough inventory is written off in this company, and I would think someone from Paul, Weiss would know that we would attempt to prove damages in the trial, and that necessarily includes ~~as a necessary alternative,~~

how much should have been written off.

MR. BLUMSTEIN: I am not a ~~profit~~ prophet. I don't know how you are going to prove damages, Mr. Foster.

THE COURT: I would say, then, I do agree on the basis of these statements that this no time to call an extended recess in this case for those purposes.

Is it possible to proceed with the other witness and let this witness go until Monday for you to make some kind of an arrangement to do whatever is necessary to prepare --

MR. BLUMSTEIN: I have no objection to proceeding in that fashion. I am not asking for an extended recess.

THE COURT: Perhaps that is what we will have to do.

MR. FOSTER: On the basis of the documentation that we have given to Mr. Blumstein, can we have -- admit the exhibit into evidence?

THE COURT: I will take it subject, put it that way.

For the present purposes, I will take it subject and view any further developments as really an attack upon its weight, the weight that should be

given to it.

THE CLERK: Plaintiff's Exhibit number 29 marked in evidence, on conditions indicated by the Court.

(So marked.)

MR. FOSTER: I guess you are excused, Mr. Christopher.

THE COURT: Yes, I believe you are now.

(Witness excused.)

THE COURT: He understands he has to come back on Monday?

MR. ABRAMS: Yes sir.

W I L L I A M C A R O L L A, called as a witness, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ABRAMS:

Q Mr. Carolla, what is your home address?

A 5011 Wooddale Lane.

Q What city do you live in?

A Edina, Minnesota.

Q By whom are you employed, Mr. Carolla?

A I am self-employed.

Q What field are you in?

A I am in the consulting business, concentrating in the aviation industry.

Q How long have you been a self-employed consultant?

A Since the first of this year.

Q How old are you, sir?

A 56.

Q Could you list for us your employment history from the first time that you had anything to do with the aircraft parts industry?

A Aircraft parts industry?

Q Yes. When did that start, first of all?

A I got into the aircraft parts industry in 1955, I believe.

Q When were you first in the aviation industry, in any fashion?

A Oh, about 1938 or '39.

Q What did you do in 1938, 1939?

A I became a pilot and eventually became qualified as a professional pilot.

I was a flight instructor prior to World War II, and eventually became a naval aviator during World War II.

Q What did you do after World War II?

A After World War II, briefly, I was an airport operator in Berrington, New Jersey. I think that was approximately nine months, after which I joined a chemical manufacturing corporation -- company, rather, in Camden, New Jersey, known as the RM Hollingshead Corporation.

Q What is the nature of the business?

A At that time they were forming their new aviation chemicals division, and I became a part of that division.

Q What did you do as a part of that division?

A Well, initially I was a salesman and eventually I became assistant sales manager, and during the course of my tenure at Hollingshead, the aviation chemicals division and ~~absorved~~ absorbed several other divisions and eventually became the industrial government division, of which Aviation Chemicals was a part.

Prior to my departure from Hollingshead I was a division manager.

Q What did the Aviation Chemical Division of Hollingshead consist of, what did it sell?

A Well, a very wide variety of products that could be used by the people in general aviation, the airlines, and also the aviation manufacturers, consisting of non-flammable hydraulic fluids, high temperature lubricants,

low temperature lubricants, government specification material of all kinds; emulsion degreasers, carbon removers, paint removers, cleaners of all types, polishes, waxes -- I could go on.

Q When did you leave Hollingshead?

A I left Hollingshead in '54.

(Cont'd on next page.)

Q What was your next position?

3 fw A My next position was with Air Associates, Inc.

Q What was the business in 1954 of Air Associates?

A Air Associates was a wholesale distributor of aircraft parts, supplies and equipment.

Q What position did you hold with that company starting in 1954?

A I was their Midwest Division manager with a headquarters in Chicago.

Q What responsibilities did you have?

A Well, I ran the whole branch, so to speak, that took care of the portion of the United States that I was responsible for, which included direct supervision over sales, its procurement, custody of the inventory, of course; all of the responsibilities of inventory, including turnover responsibility, profit control, warehousing, and also the accounting that went along with operating the company -- I should say an operation of that size.

Q How large was Air Associates in terms of its place in the industry?

A At that time the company in its entirety was, I think I can safely say, considered to be the giant in the industry at that time.

Q You say that you were the Midwest Division

manager. Were you subsequently promoted from that position?

A Yes, sir. In, I believe, early 1958, or the latter part of '57, I became vice president, sales, for Air Associates.

Q What were your responsibilities as vice president of sales?

A Well, it embraced pretty much the same responsibilities I had as a -- as the Midwestern manager, except I had the same responsibility for all of their branches.

Q Did you at some point leave Air Associates?

A Yes, I did.

Q When was that?

A I left Air Associates in December of 1959.

Q To whom and to where did you go?

A I became employed by Van Duzen Aircraft Supplies, Inc.

Q In what position?

A Vice president of sales and director.

Q What were your responsibilities in that position?

A Well, much the same as those I had at Air Associates: complete responsibility for sales and everything I guess comes down to an adequate return on investment.

Q What business was Van Duzen in?

A Van Duzen was in the wholesale distribution

of aircraft parts, supplies and equipment.

Q Were you subsequently promoted at Van Duzen?

A Yes, I believe -- Please don't hold me to these dates, they are approximate -- I think it was approximately 1962 that I became vice president and general manager, and in 1963 or '4 I became executive vice president, and in 1968 I became its president.

Q How long did you serve as president of Van Duzen?

A Five years.

Q Until when?

A Until December 31, 1973.

Q How large was Van Duzen in its field?

A You mean when I left them?

Q Yes.

A Their sales were fairly close to $50 million.

Q Will you tell me where that places Van Duzen with respect to its competitors in terms of size?

A I would say that Van Duzen, in its type of business, is the largest.

Q You said earlier that you are currently a consultant and that you have been a consultant since the first of this year?

A Yes, sir.

Q Can you tell us the names of any of your clients who have consulted with you since the start of the year?

A Van Dusen is one. Airborne Manufacturing Company in Ohio. Temple Products Company in Ohio. Aircraft Instrument & Development Company in Wichita, Kansas, and Aviation Maintenance and Publishing in Wyoming.

Q Can you give us an idea of the types of subjects that you have been consulted by these companies with respect to?

A Well, it covers a wide variety of things, which includes market analysis, profit analysis, exploitation of new markets, discovery of new markets, new products, general management problems.

Q Have you been consulted with respect to acquisitions?

A Yes, I have been involved with that, both directly with the companies that retained me and also some other companies that don't keep me on a permanent retainer.

Q Are there any associations which are comprised of companies in the wholesale distribution of aircraft parts?

A Yes, there are. The principal one I would think is the Aviation Distributors & Manufacturers Association.

Q Have you held any offices or positions with that institution?

A Yes, I have. Over the years I guess I have chaired about every major committee that they have.

I have served on the board of directors I think for two three-year terms, and in 1970 became -- I was elected second vice president of the Association in 1971, first vice president, and in 1972 I became its president.

Q How long did you serve as president?

A One year.

Q In your employment at Van Duren, what experience did you have as a negotiator or as a representative of Van Duren with respect to the acquisition of stock or business in other companies?

A Well, with Van Duren, the first one that I was involved with was General Aviation Supply Corporation, with headquarters in St. Louis.

That was about in the latter part of '61 or early '62.

In 1963 we acquired Air Associates.

Q Let me stop you for a moment and ask you what you did with respect to the acquisition of General Aviation Supply Co.

A Well, basically I sought them out, talked with

the owners, determined their relative interest in blending their company with ours, selling them on the idea, bringing them to the bargaining table, if you will, after which, of course, I was a part of the negotiations and also very much a part of the company's analysis to see if the blending of the two companies made economic sense.

And, of course, after the acquisition I was directly responsible for operating the combination.

Q Were you involved in the decision-making process as to how much to offer?

A I didn't make the decision, but I was a part of the decision.

Q I think you mentioned Air Associates.

A Yes, sir.

Q Was that the next acquisition which you participated in?

A Yes, Air Associates was next.

That was about in 1963.

Q What was the business of General Aviation Supply Company?

A General Aviation Supply Company was in the wholesale distribution of aircraft parts, supplies, and equipment.

Q What was the business of Air Associates?

A Well, I'd better set the record straight as it relates to Air Associates.

Air Associates was a part of Electronic Communications.

We bought the Air Associates portion of it from them, which was in the wholesale distribution of aviation parts, supplies and equipment.

Q Were you involved in the acquisition of any other companies?

A Yes, there were others. Washington Aircraft & Transport Corporation, which was a small company in Seattle.

Q What was their business?

A They were in the wholesale distribution of parts, supplies and equipment, and they also had a fixed base operation, airport service operator type. That was a part of their company as well.

Q Were there any other acquisitions on which you functioned at Van Duzen?

A Yes. There was one in Alaska, Alaskan Aircraft Equipment & Supply, I think was their name, offical name, at that time.

They, too, were in the wholesale parts distribution business in aviation; in addition to which they had a small instrument overhaul shop, and a small accessory

overhaul shop.

Q Were there any other companies with which you were involved on behalf of Van Duzen in the acquiring?

A Well, in 1971 we did not acquire a company as such, but the Pacific Airmotor Supplies -- Parts Supplies Division, was up for sale, and while we did not buy the company as such, we bought the inventory.

Q What role did you play with respect to the acquisition of the companies that you have named after General Aviation Supply Company, that is to say, Air Associates, Washington Aircraft, Alaskan Aircraft, and the Pacific Airmotor?

A Well, my role in the Pacific Airmotor acquisition -- it is a buyout of the inventory, and I would like to set that aside, if I may.

I pretty much did the same thing: contacted the owners, found out what they were doing, the extent to which they were doing business, convinced them that their lot in life might be better with us, brought them to the bargaining table.

Q Did you participate in the decision as to how much to offer them?

A Yes, I did.

Q Mr. Carolla, have you examined the following

documents at our request: the financial statements of Standard Aircraft for the years 1965, 1966 and 1967, which have been introduced as Plaintiff's Exhibits 4 through 6, and the unaudited statement of Standard for the nine months period ending at September 3, 1968, which has been introduced as Plaintiff's Exhibit 7? Have you examined those documents?

A Yes, I have.

Q Have you also examined the figures setting forth the annual sales of Standard of products of the Whittaker Corporation, the Bendix Navigation & Control Division, and the Bendix Energy Controls Division for the years 1965 through 1968, which have been introduced as Plaintiff's Exhibits 11, 16 and 19?

A Yes, I have.

Q Have you further examined, at our request, Plaintiff's Exhibit 12, which is an internal memorandum of the Whittaker Company, dated January 6, 1967, and Plaintiff's Exhibit 13, which is an internal Whittaker memorandum dated July 8, 1967?

A Yes, I have.

Q Have you further examined at our request Plaintiff's Exhibit 17, which is a letter dated April 1, 1968, from the Bendix Navigation & Control Division, reducing the discount rates, and Plaintiff's Exhibit 20, a letter

to Standard Aircraft of October 30, 1968, from the Bendix Energy & Control Division, reducing the discount rates?

A Yes, sir, I have.

Q And have you further examined at our request Plaintiff's Exhibit 14, memorandum of Jerry Bollo, dated January 28, 1969, with respect to his trip to the Whittaker Company; Plaintiff's Exhibit 15, the February 6, 1969, Whittaker TWX to Standard, and Plaintiff's Exhibit 23, a letter of April 11, 1969, from the Bendix Corporation canceling second generation business for Bendix Navigation & Control?

A Yes, I have.

Q You have examined all those documents?

A Yes, sir.

THE COURT: May I ask you to repeat the one after 17.

MR. ABRAMS: 20, the October 30, 1968 letter.

Q On the basis of your examination of the documents to which I have just made reference and your knowledge of the aircraft and supply industry, have you an opinion as to the value of the shares of stock of Standard Aircraft as of September 18, 1969?

A Yes, sir, I do.

Q What is your opinion?

A May I refer to my figures?

Q Surely.

A I would like to be specific, if I may, rather than give you a rough figure.

MR. ABRAMS: I would like to mark this for identification as Plaintiff's Exhibit 30.

THE CLERK: So marked.

(So marked)

Q Let me ask you first Mr. Carolla, what this document is.

A Well, this is a document that was prepared at my direction stating what my opinion was of the worth of Standard, after inspecting all of the documents that I looked at, and I come to this conclusion.

Q Let me ask you first, and then I will come back to this document in a few moments, whether you can now tell us what your conclusion is as to the value of Standard Aircraft stock as at September 18, 1969.

A The value of the shares as at September 18, 1969, I would place it at $5.13.

Q Can you tell us the basis for your conclusion?

A Yes, sir. After taking a look at the various documents that I inspected and then determining the amount of business that in my opinion they were going to lose, the

effect of the reduction in their gross margins, I concluded they were a company with some problems in the future, and I figured that their net worth, minus the dead stock figure, giving us an adjusted net worth, would be about what in my opinion I would pay for them at that time.

Q Let me pass the dead stock subject entirely and ask you on what basis you conclude that net worth was the figure that you would value the stock of Standard Aircraft, as at September 18, 1969.

A Well, the problems that they had facing them, really; the main thing of value that they had was their inventory, and, of course, that constitutes the major portion of their worth and the inventory plus their fixed assets.

Q What were the problems facing them which leads you to this conclusion?

A They were facing a loss of roughly 34 percent of their business. They were --

Q On what basis do you say that, Mr. Carolla?

A They were facing the loss of the Whittaker line.

Q On what basis do you conclude that they were facing the loss of the Whittaker line?

A That was fairly easy for me to conclude by

reading the correspondence that I reviewed, the internal memos of Whittaker, Jerry Bollo's letter, and the TWX that were received from Whittaker.

To me that was the handwriting on the wall, that at some point in the future they were not going to be distributing for the Whittaker Company.

(Continued on the next page.)

Q Can you tell us anything more with respect to that subject, as to why you concluded it was the handwriting on the wall?

A Well, one of their men, Mr. Danks I believe his name was, went to a great deal of trouble to justify their aircraft division -- their aircraft division controls -- aircraft controls division, I beg your pardon.

MR. WILLIAMS: Components division.

A (Continuing) Components, the ACD, Aircraft Components Division went to a great deal of trouble to demonstrate to management that they could handle it on a direct basis, and it would, in fact, based upon their opinion, his opinion at least, make a higher profit.

They traveled to several of the airlines that they previously had not been serving, to probe, contact the buyers, contact the key people, and while he didn't say this in his memo, that he told the airlines that they were going to go direct, the implication was certainly there.

Jerry's memo I thought was pretty conclusive.

Q Let me hand you Exhibit 14 which is Mr. Jerry Bollo's memorandum and ask you what it is in that memorandum that you are making reference to now.

A Probably the key is that paragraph No. 2, "On the Lockheed ~~L-1011~~ 1011, the competitive situation is so great that

in all probability we will not be handling either unit or spare part support business on the aircraft. The 747 will probably be the same."

With that in mind, it's not very logical, in my opinion, for a company to handle one group of components on a direct basis to the airlines and another group of components to distributors. It's not practical from an operational standpoint and I don't think it's economically feasible.

And that I can only conclude that at some point of time in the future, you aren't going to have a Whittaker line.

Q Now, two of the documents that I made reference to and that you have stated that you have based your opinion are Plaintiff's Exhibit 17 and 20, which are documents which cut the discount rate of Bendix Navigation and Control and Bendix Energy ~~and~~ Controls products.

Let me hand you those documents and ask you to what extent they were relevant in forming your judgment that as at September 18, 1969 you would not value the stock of Standard in excess of book value?

A Well, let's address ourselves to Navigation and Control, first of all. On the first page, the fourth paragraph, it is obvious to me, from a practical standpoint, that no wholesale distributor can handle any line with those kind of profit margins.

Q Because they're so low?

A What's that, sir?

Q Because they are so low?

A Ridiculously low.

I mean, 4.2 percent on a sale is -- You can't even invoice and collect and come out on those margins, much less carry inventory and do all the other things that are necessary to have a sustaining distribution business.

So that's a very serious deterrent to their sales in that area, at least, and also a serious deterrent as it relates to their future growth.

Q What does it tell you, if anything, about future growth?

A It's going to be very severely restricted, because if they're not going to be in that second generation jet environment, there is not much to grow with. At least at the airlines level.

Q What about the other exhibit I've put before you, Exhibit 20?

A Well, here, with Energy ~~and~~ Controls, we have, if my memory serves me correctly, I think that their sales were something in excess of a million and a half dollars a year. I don't exactly recall the specific number. But their gross, gross profit was going to be drastically reduced.

The fact is, I think the reduction in gross profit, I

concluded to be something in excess of a 30 percent reduction in gross profit. Using the percentage factors, if you follow me.

Q Does that have an effect on the future growth of the company?

A Well, yes, indeed it does. It reduces what was once a profitable line to what I would consider to be a line that is marginal, at best.

Q Let me refer now to Plaintiff's Exhibit 23, which is the April 11, 1969 letter of the Bendix Navigation and Control Division and ask you to what effect -- what, if anything, that document tells you of relevance to your decision as to valuation of Standard Aircraft as at September 18, 1969?

A Well, it tells me two things and, I might add, incidentally, I received this same letter, in a previous capacity.

Q At Van Dusen?

A Yes.

It tells me two things, and that is that my growth is not going to be there because they have elected to serve the airlines direct on the 747s and -- well, second generation jets, if you will, in addition to which, again citing the same situation at Whittaker, it's not very logical

for a company to handle one group of products that they have through distributors and another group of products on a direct basis to the airlines.

Again I repeat, it doesn't make economic sense and it doesn't make operational sense, and it's only a matter of time and I'm afraid you aren't going to be handling anything, which, I might add, is the conclusion which I drew myself when I received the letter at Van Dusen.

Q Why do the documents that I have shown you and made reference to and your knowledge of the field lead you to conclude that net worth is the figure than which you would pay no more for Standard stock as of September 18, 1969?

A Well, based upon all of this data and the conclusions that I drew, which are my opinions, of course, that's about all they have to work with for quite a period of time because to recoup three plus million dollars out of a total sales of nine million dollars is not easy. It's not easy in any business, because it constitutes a very sizeable portion of your business, number one. Number two, they had no place else to go, in my opinion, but to make a greater and further penetration into general aviation.

Q General aviation as opposed to what?

A To airlines.

Standard at that time was a strong airline supplier.

I think the mix of their business would indicate that general aviation was the smaller portion of their business and their general aviation business was primarily confined, I believe, and I think I have read somewhere in one of the depositions — not one of the depositions, Mr. Bollo's deposition -- that their general aviation business was pretty much confined to the corporate trade and the -- what Mr. Bollo referred to as the smaller overhaul operations.

Now, there is an awful lot of other general aviation besides that throughout the country. They are the fixed base operators, as we refer to them, or if you want a better term, airport service operators.

There is a vast difference between going out and making an effective penetration to the -- to the extent of three plus million dollars, calling on nationally 5500 to 6,000 accounts, as contrasted to, let's say, 30 or 35 airline accounts. It takes more branches. It takes more salesmen.

And more branches and more salesmen means money, and the sales are not forthcoming immediately, if you follow me.

Q Are you saying that on the basis of the documents that you have seen, the financial statements of Standard, that as ~~at~~ of September 18, 1969, one could confidently say that they were -- they should be put into liquidation?

A Oh, no. No. I wouldn't say that.

Q Are you saying that you are sure as of that date that they had no future?

A No, I wouldn't say that they had no future, not at all. I don't want to imply that.

All I'm saying is that their future, for a few years, is not very bright. They've got an awful long, rough row to hoe.

Q In making your determination as to the value of Standard stock on September 18, 1969, did you take into account the price earnings ratio of Standard Aircraft?

A Well, it all boiled down to the same figure, you know, in a sense, but no, I didn't look at that because -- because of these facts.

I figure that based upon the facts that I saw, the one thing that I would -- the only thing that I would look at would be its net worth.

Q Mr. Carolla, do you know the practices followed by any companies that are competitors of Standard with respect to the writing off of inventory at year end as being dead stock?

A O.K. You're talking about dead stock inventory?

Q Yes, dead stock.

A Yes, I know of a few I can name. Do you want me to name some?

Q Yes. Can you tell us, first of all, the names of the companies?

A Well, I happen to know the one for Van Dusen, and Van Dusen's formula is that if they do not buy a product for two years, they write it off 100 percent.

Standard's current write-off policy is that if a product is not sold for two years, it's written off a hundred percent.

I believe Southwest Aeromotive, if theirs is not sold in six months, it's written off a hundred percent.

Q Do you know of any company in the field which has a practice any more liberal than a two-year write-off period? That is to say, which writes off less than would be written off by the consistent use of a two-year no-sale write-off rule?

A You mean, where they would, let's say, for example, be something in excess of three years and no movement?

Q Yes.

A I see. I follow you.

I know of none.

Q Did you listen to the testimony of Mr. Rushia with respect to the methodology used by Standard Aircraft in writing off inventory?

A I did hear that, yes.

Q Do you have a view as to the adequacy of that

procedure?

A Yes, I do.

Q What is your view?

A I would consider it to be inadequate.

Q Why?

A Well, there is no way that you can properly reflect the value of your inventory by choosing a number. Looking at that would make me question very strongly the value of the inventory.

If I were going to buy the company, I would certainly want to dig into it in spades, if you will.

Q Have you examined, Mr. Carolla, what has been marked and introduced subject to later examination Exhibit 29, which is the Standard Aircraft Summary of most probable value of inventory considered dead stock under application of a two-year rule?

A Yes, I have seen this document.

Q Does that affect your judgment as to the value of Standard stock on September 18, 1969?

A Yes, it would.

Q How does it affect your judgment?

A Well, I think I've already discounted that, Mr. Abrams, haven't I? When I made the statement of $5.13 a share as of September 18?

Q Well, I think perhaps now is the time to return to what has been marked as Plaintiff's Exhibit 30 for Identification and now have you explain to the Court what the numbers are and how you reached them on this document.

A O.K. We will start with the top number?

Q Yes. What does this chart show as at December 31, 1968?

A O.K. It shows the net worth at December 31, 1968 as being $2,634,958, with total shares outstanding of $443,700, giving you a net worth per share of $5.94.

Q Do I understand you correctly that that is not affected -- that does not take into account the inventory question at all?

A That is correct.

Then to continue, the $291,304 represents the additional amount of inventory which would have been written off had a two-year rule been applied to the entire inventory.

Q Is that figure taken from Exhibit 29?

A What's that, sir?

Q Where does that $291,000 figure come from?

A That comes from, I guess, from here.

Q Which is Plaintiff's Exhibit 29?

A Yes.

Q What is the next figure in the chart?

A The next figure on the chart would be an adjusted net worth, assuming that that material had been written off, and translates itself into an adjusted net worth per share of $5.28.

Q Now would you go to the next column for us, please?

A Yes, I would.

September 18, 1969, the net worth was stated to be $2,659,694, with the same number of shares outstanding, 443,700, slightly higher than the previous figure, giving a slightly higher per share figure of $6.08.

The total dead stock figure is higher. $381,427, giving an adjusted net worth of $2,278,267, with an adjusted net worth per share of $5.13.

Q That adjusted net worth per share of $5.13 is the figure that you would value Standard stock as of September 18, 1969?

A September 18?

Q Yes, sir.

A Yes, sir, exactly.

MR. ABRAMS: I have no further questions, your Honor.

MR. BLUMSTEIN: Your Honor, it is now 4:20. I wanted to request a brief recess. Our experts are

in court and I'd like to discuss --

MR. WILLIAMS: I don't hear you, Mr. Blumstein. Please, louder.

MR. BLUMSTEIN: I say, I wanted to request a brief recess, five minutes, seven minutes.

THE COURT: Suppose we take 10 minutes, until 4:30.

MR. BLUMSTEIN: But I do anticipate that my cross-examination of Mr. Carolla may take an hour or so. Maybe longer.

MR. WILLIAMS: We're willing to wait and do it today, if we can. Mr. Carolla, I promised him he could go tomorrow to Pittsburgh, or wherever he's going.

THE COURT: All right. I think probably we should try to get him on his way, if we can tonight.

MR. WILLIAMS: That would be very kind of you, your Honor.

MR. BLUMSTEIN: I'll do my best.

THE COURT: All right. Let's recess until 4:30 and we will stick it out until 5:30.

MR. WILLIAMS: I am sorry to hold the Court so long.

THE COURT: No, you are not holding me up. I would be here, in any event. It just means I will be

doing this instead of something else.

MR. WILLIAMS: Thank you, your Honor.

(Recess taken.)

(Continued on next page.)

MR. ABRAMS: Your Honor, I neglected to seek the admission into evidence of Exhibit 30, and I would like to do so now.

MR. BLUMSTEIN: I have no objection, your Honor.

THE CLERK: Plaintiff's Exhibit 30 now marked in evidence.

(So marked)

CROSS EXAMINATION

BY MR. BLUMSTEIN:

Q Mr. Carolla, it was a pleasure the last time I spoke to you. I hope it will be an equal pleasure today.

May I ask you some questions about your educational background, please.

A Yes, sir.

Q Did you go to college?

A I have two years at Niagara University.

Q Anything beyond that?

A No, except that I majored in accounting and whatever education is required to become involved as a commercial pilot, instruments and so on.

Q Have you taken any postgraduate or adult education courses on any subject?

A I have not.

Q I take it you have never had any education on the subject, for example, of evaluating securities of a company?

A Sorry, sir, I can't hear you.

Q You have had no educational training concerning the subject of evaluating the securities of a company?

A Evaluating what, sir?

Q The securities, the stock of a company.

A Securities?

Q Yes, sir.

A No, I can't say that I have had that experience.

Q You spoke before about a number of acquisitions that have been made by Van Dusen at the time that you were there, and your participation in those acquisitions as a negotiator and in terms of setting a price, and matters of that sort.

What I would like to ask you is, before Van Dusen made any of these acquisitions, what kind of an inquiry did it conduct into the business of the company it was acquiring?

A Well, in virtually every instance the companies that we acquired were companies that were very well known.

We were in the same business. In most instances we handled the same product lines. We were well

acquainted with their executives and management personnel because we met with each other socially and at trade association meetings. We knew where they were, and in most instances we knew from whom they were getting business that we weren't getting business from; we knew them fairly well -- quite well, in fact.

Q But beyond that, what information did you seek to acquire, beyond the general information that you had about the company?

A You mean at the point of -- I should say prior to the negotiations for the buying?

Q Correct.

A Well, sure. We would certainly want to take a look at their profit and loss statements. Our rule at least was a three-year period minimum, and hopefully a five-year period.

We would want to take a look at their balance sheets for the same period.

We would want to see their leases.

We would want to know what their -- of course, all the inventory figures and so on are on your balance sheets. We knew their personnel very well, that wasn't a problem.

We would want to see a listing of their fixed

assets, and what we would always want to do is we would like to see their last physical inventory so that we could inspect that.

We would want to know what their inventory write-off policy was, and-- I am sure there are other things that our attorney told us to seek out and request, such as their status with Internal Revenue; did they have any litigation pending?

I would say that covers a great deal of it.

Q Let me ask you this: You mentioned inventory before. Was the content of their inventory a very important factor for you?

A It was always an important factor.

Q And how would you go about determining the content of this inventory?

A Well, I personally would take a team with me and visit where they had multiple branches and visit their branches and visually inspect the inventory with the team, visually inspect the premises, of course, and all the assets that they had, the fixed assets that were on the scene, and then get a listing of this inventory -- as I said, their last physical inventory, by branch.

Q That is a complete listing of their inventory?

A Yes, indeed.

Q Yes.

A And review that.

Q What about, for example, in connection with the inventory, sales history of particular items?

A Sir?

Q Sales history of particular items in the inventory.

A I'm sorry?

Q I'm sorry, too.

A It's not your fault, sir. Sometimes certain words will not come through, or certain letters will not come through.

Q What I am asking you is were there times when you would ask for a sales history of the particular items in the inventory?

A Yes, it depended. For instance, if we saw some, just what we considered to be disproportionately large quantities of materials and so on, we would like to know what the sales history was, and could they justify those quantities.

Q And was it the objective of this examination of inventory, examination of the listing of the inventory, and an examination of sales history, whatever you did in that area, so that you could make an independent judgment as to the content of the inventory?

A I believe that is a reasonably fair statement. And its salability.

Q In connection with these various companies that you mentioned Van Dusen acquired, did you find when you asked them about their inventory write-off policies, that you got varying answers, that they all didn't have the exact same policy, but there was some variation?

A Yes, there was a variation.

Q Do you recall the extent of the variation?

A Oh, well, some of them would write it off if they had not sold it in a year; some of them would write it off if they hadn't sold any for two years. Some of them would write it off, let's say, if they had not sold any in a year, then they would write off a portion of it, 25 or 50 percent, and then write off the balance later. And then, as it related to excess inventory, some of them, if they had an excess of inventory which was still selling but not in sufficient quantity, beyond the one-year supply, they might write off a portion and then a portion in another year, or they might wait and take a two-year supply and treat it in the same manner, or something in excess of a two-year supply, I should say.

Q Now, in connection with these companies, were you interested in the names of the manufacturers whose

products they were distributing?

A Yes, we were interested in that, but in most instances w[illegible]w.

Q Were you interested in what the terms of the contractual relationships might be between the company you were acquiring and the manufacturers whose products it was selling?

A Yes, that is a factor, and in those instances, as I said, we knew.

Q Were there instances when you might take a look at the contracts themselves?

A Yes. It depends on the magnitude of the line, but inspecting the contracts was, I would say, not anything we did to any great extent.

Q But you did do it to some extent?

A To some extent, yes, sir.

Q Were you suggesting in your prior answer that you might be more likely to do it if you were dealing with a significant supplier?

A A significant supplier that we did not represent.

Q That you did not represent?

A Yes.

Q And that is because you assumed that the contractual relationship was the same with that company as it

was with your company?

A I think that is a pretty good conclusion, yes.

Q After you had obtained all of this information, examined the profit and loss statements, the balance sheet, done what you wanted to do with the inventory, taxes, leases, fixed assets, et cetera, I suppose there came a point in these negotiations when you made an offer as to price?

A Yes.

Q Can you tell me whether there was any methodology you used to take this raw data and translate it into what you thought was an offer you should make for that company, for its business?

A Naturally we would take into account where they were.

Q Why was where they were important to you?

A Well, it's important from the standpoint -- I'm talking now about the experience that I have had.

Q Yes, I understand that.

A That's what you want to confine it to?

Q That is what I am confining it to.

A It is important as to where they are, because if we both happen to be in the same city there is no sense in having two locations in the same city, you see.

In most instances they are almost across the

street from one another, so that is a factor from the standpoint, of course, you can save a considerable amount of overhead by blending the two operations.

We would take a look at the content of their business. We would, as best we could, determine to what extent -- what percentage of that business we could retain after we acquired them.

We took a look at their inventory to determine if it was going to inflate our inventory; how long it was going to take to reduce that inventory, for obvious reasons, cash flow purposes and other things.

We inspected their receivables to see if they were valid and could we -- did we feel that we could collect them.

We would put together a pro forma profit and loss statement and balance sheet indicating the combined operations, and our practice was usually for a three-year spread.

After we looked it all over and determined that by acquiring this company we could increase our shares, our earnings per share, then we would start to figure how much we wanted to pay for it.

Q I understand that. But how did you get from this evaluation to the figure per share? Was there any

formula that you used?

A Well, yes. I am sure there was a formal method used. I personally did not accomplish that.

Q Someone else in your organization did?

A Well, sure. That's what we have accountants and legal-- I should say accounting people for. They did the mechanical, put together the thing and so on, and they come up with what they felt looked like a reasonable figure that we should offer, based upon the projected figures that we had given them on what we thought we could earn.

Q Did those accounting people ever discuss with you or take up with you the methodology that they were using, the formula that they were using, how they were arriving at a price?

A Oh, I'm sure that they did.

Q What did they tell you?

A I'm not quite sure that I know what you want, Mr. Blumstein.

Q You have told us about the data that you wanted, how you examined the data, and what you were interested in finding out, how much the company is going to earn for me, and you come [illegible] with a number and say, for instance, "The company is going to earn for me $100,000 next year, and $100,000 the year after" -- O.K.?

A Yes.

Q I wanted to know if there was any technique, any methodology by which you translated that number into the price of the business you were going to acquire.

You were not going to pay $100,000, you were going to pay something in excess of that. That is what I am getting at. Do you follow me?

A They would translate the whole thing into what our -- what we could do with that business, translate it into future earnings, place a value on those future earnings and also say that we would suggest that you try to buy at this figure.

If you can't buy at this figure, you can go as high as this, based upon our analysis of it.

(Continued on the next page.)

Q I take it that in connection with your decision as to what you were ready to pay for the company, really one of the important considerations was what could the business do for you.

A A very important consideration.

Q What did you want it to do for you? Would, for example, the acquisition of the company give you more comprehensive coverage in terms of your distribution system?

A Yes, that's a factor, and sometimes if the immediate earnings were not going to be as nice as we would like them to be, the fact that we could get more comprehensive coverage, more volume, certainly on a permanent basis, extend our coverage; those were factors that went into it, of course.

Q So the --

A It depended upon the company.

Q Yes, I understand. The aims of the buyer were of significance in determining what the price was going to be?

A True.

Q In connection with your having been retained to testify in this case, can you tell us when was your first contact with any representative of the plaintiff in this action?

A My first contact was, I believe, on September

the 3rd.

Q Of what year, sir?

A Of this year.

Q Who was that contact with?

A Mr. Williams.

Q Mr. Williams, who is sitting right here, Mr. Paul Williams?

A Yes.

Q Was that on the telephone?

A Yes, it was.

Q Can you tell us what Mr. Williams said to you and what you said to him in that telephone conversation?

A Well, as I recall it, I think Mr. Williams told me that it was a matter of litigation between Pittsburgh Coke & Chemical and Louis J. Bollo, and he wanted an expert witness, and would I like to be an expert witness, and I think I said to Mr. Williams, "Well, it depends on what you want me to try to be an expert on."

He gave me, I would say, a very general idea of the situation and we decided that it would make sense for me to come back to New York to listen.

Q By the way, you have known Mr. Louis Bollo for a number of years, haven't you?

A Yes, I have.

Q And of course you have known about the existence of Standard Aircraft for a number of years?

A Known what, sir?

Q You have known about Standard Aircraft?

A Yes, indeed.

Q Indeed, there was a time, was there not, when Van Duzen, or representatives of Van Duzen, and Mr. Bollo had some discussions concerning Van Duzen's possible acquisition of Standard; is that correct?

A Yes, I think there were some discussions of that.

Q Do you recall when those were?

A I can't recall specifically.

Q Mid 1960's?

A Mid to late 60's, would be my guess.

Q After that first contact, can you tell me what happened next?

A I came to New York.

Q Right.

A And conferred with Mr. Williams and Mr. Abrams and Mr. Foster. And -- What else would you like?

Q That was on what date?

A I believe that was on the following day.

Q September 4th?

A September 4, yes.

Q Could you tell us, please, what happened at that meeting? First of all, how long did it last, do you recall?

A I would say the total involvement was four or five hours.

Q And I am almost reluctant to ask this question but can you tell us what was discussed at the meeting? I don't want the answer to be four or five hours. See if you can summarize it for us in general terms, please.

A Basically, what they wanted me to do was take some assumptions and assume that I knew this information as of December '68, I think, and September '68, and --

Q I think you mean September '69, December '68 and September '69.

A All right, sorry.

And based on those assumptions, what would I think the worth of Standard Aircraft would be, assuming those things that I had.

Q I will come back to the subject of what assumptions they asked you to make, but first of all, during the course of that meeting did you read any documents

A Yes, I read some while I was there.

Q Do you recall what it was that you read when

you were there?

A Well, basically I had the documents that were presented in evidence today, two internal memorandums from Whittaker, ~~the~~ Jerry Bollo's memorandum; I had some figures as it related to the amount of business they had done in 1968 in the Whittaker line, the Navigation & Controls and the Energy Controls, and I received a copy of Mr. Lou Bollo's deposition.

Q You didn't read it that day, did you?

A No, I did not. I received their financial statements for '65, '66, '67, and I had the 9-month unaudited statement for '68, and an internal memo that they had within their own staff there.

Q On the financial statements, did you see any financial material for the year 1969, do you recall?

A Yes, I did.

Q What did you see for 1969?

A I saw the annual statement for -- wait a minute. I'm not sure whether I got a copy of the statement or whether I got the figures. I'm inclined to think that I got a copy of the statement. That was sent to me later.

Q You mentioned that you received a memo which had been prepared by the Cahill firm?

A Yes, sir.

Q Let me show you this document and ask you if this is that memo.

A I believe that is it.

Q Is that it, sir?

A Yes, I believe so.

MR. BLUMSTEIN: I suppose I should have it marked. I would like to mark it and offer it in evidence, please.

MR. ABRAMS: We would be delighted to have it marked and put in evidence, your Honor.

THE COURT: Do you want to reconsider that offer?

MR. BLUMSTEIN: No, sir.

THE COURT: Defendant's Exhibit P marked in evidence.

(So marked)

MR. BLUMSTEIN: Mr. Abrams, there is no date on this memorandum. Do you have any approximate idea when it was prepared?

THE COURT: Why don't you ask the witness?

Q Do you have any approximate idea as to when this memorandum was prepared?

A No, sir, I don't.

MR. BLUMSTEIN: I would, in the circumstances, your Honor, like to address that question to Mr. Abrams

if I may.

THE COURT: Didn't you understand the witness prepared it?

MR. BLUMSTEIN: No, your Honor, this is a Cahill memorandum.

THE COURT: I thought I heard you say that he had prepared it.

MR. ABRAMS: No, your Honor; this is a memo of our firm which we made available to the witness.

I must say I do not see the relevance of my asking Mr. Foster when he wrote it.

Since the witness doesn't know when he wrote it, it has no effect on anything in this case.

I would object to that request on that basis, but not very strongly. It just has nothing to do with anything, as to when it was written. I am sure we have lots of other memos.

MR. BLUMSTEIN: I am sure you do, but this is the only one you showed Mr. Carolla.

THE COURT: You are not sure about a date, is that the idea?

MR. BLUMSTEIN: There is no date on the memorandum, your Honor. I don't need a precise date.

THE COURT: Is that important?

MR. BLUMSTEIN: I would like to know what the time frame was in terms of the preparation of this memorandum.

MR. ABRAMS: I really don't think that is proper as part of cross-examination of Mr. Carolla. If they want that, we should put Mr. Foster on the stand, but we should really try to let Mr. Carolla go.

MR. BLUMSTEIN: I withdraw my question.

Q In addition to the various documents that you saw and that you described, and in addition to the conversations that you had with counsel for plaintiff, is there any other information or any other investigation you made in connection with forming your opinion?

A Oh, I made a call to the executive vice president of the ADMA, Aviation Distributors and Manufacturers Association, and I asked him if ADMA had ever conducted a survey amongst the distributors to determine what their write-off policy was.

Q What did he say?

A I got a negative answer. I believe I consulted with -- I did a little digging into the American Aviation Directory and -- to find out some information on airlines, foreign and domestic.

Q At the end of this meeting on September 4, how was it left, had you been retained or had you not been retained, or what?

A I had been retained on September 4th, yes.

Q Prior to the end of that meeting had you expressed any opinion, tentative or otherwise, as to what the answer to the question would be as to the value of Standard on those particular dates?

A You are talking about a dollar figure?

Q Not a dollar figure, any opinion, be it dollar figure or whatever.

A I think about the only thing that I stated was that based on some of the assumptions that I had read and so on, that I thought it was a company that was headed-- had some problems, some serious problems.

I don't think we got much beyond that.

Q Could you tell me what those assumptions were that were given to you on that date?

A Well, the assumptions ~~was~~ were a combination of the data that I noted in the internal memorandums from within the Whittaker Corporation. There were two of those I recall, and the letters -- one I believe from Energy Controls and one I believe from Navigation & Controls, and one I believe from Mr. Young, from Bendix Headquarters in

Detroit, and the various figures that I had derived from the internal memorandum.

Q I would like to, if I might get a bit more specific with you, ask you, was one of the assumptions that was given to you that the Whittaker Corporation had advised Standard that they were going to sell all products pertaining to their wide-bodied, second-generation jets on a direct basis, and that you, Standard, would not have the privilege of selling those parts?

A I believe that was contained in one of those documents.

Q I am asking you whether someone asked you to make that assumption or was it based on reading the document that you came to that conclusion?

A No, I think it was really based upon my reaching the conclusion after looking at the documents.

Q It was not an assumption that somebody asked you to make?

A I can't honestly say whether that is clear in my mind.

Q Let me ask you this question: Did the Cahill lawyers ask you in connection with the opinion that you might be asked to develop, to make any assumptions of any kind?

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A I don't think verbally, Mr. Blumstein, but a combination of documents.

Of course we discussed these things informally. I think it might be unfair for me, because I really can't recall their verbally defining it to that extent.

Q Mr. Carolla, you were deposed in this action, weren't you?

A Yes.

Q Do you recall my asking you this question and--

MR. ABRAMS: May I have a page, please.

MR. BLUMSTEIN: 65.

Q "Question: I assume that as part of these conversations the attorneys told you something as to what the case was about and discussed with you the kinds of opinion that they might expect you to render; correct?

"Answer: Yes.

"Question: Did they ask you in connection with the opinion that you might be asked to develop to make any assumptions of any kind?

"Answer: Yes, they did."

Do you recall that testimony?

A It's there.

Q And we then went through a list of the

assumptions; do you remember that?

A Yes, I remember going through the list of assumptions.

Q All I would like you to do is to go through the list with me now again, all right?

A O.K., sir.

Q The first one was that the Whittaker Corporation had advised Standard that they were going to sell all products pertaining to the second generation jets on a direct basis and that Standard would not have the privilege of selling those parts. Was that one of the assumptions?

A That was one of the assumptions, yes.

Q Was another assumption that Standard eventually was not going to be selling any of Whittaker's products?

A I believe so.

Q Let me stop there for a moment. Were you asked to make any assumption as to when that eventually might be?

A Can I have that assumption?

Q The assumption was that eventually you were going to ~~look at~~ lose all your Whittaker sales. I want to see if I can get some content to when that eventually might be, however down the road, one year, two years, three years, six months.

A I don't recall my getting into that, from my notes, and --

:BD
al

Q Sorry. Are you finished?

A Yes.

Q Now, in connection with the opening which you have testified today, have you made any assumption or any projection as to when all of these sales were going to be lost?

A No, not really.

Q Do you have any figure in your mind at all, any date in your mind at all?

A Certainly, certainly within the next year, two years.

Q Next year to two years?

A That's right.

THE COURT: From when?

THE WITNESS: From 1968.

THE COURT: From 1968.

Q Now, the next assumption was that Standard had been advised by Bendix Navigation and Controls that they were going to do business on a direct basis with the airlines in the second generation jet environment. Was that one of the assumptions?

A Yes.

Q That Navigation and Control's discount structure was going to be changed from what -- that the

discount structure was going to be 42.5 percent discount from list price as your buying price and 40 percent discount from retail for the airline buying price?

A That's right.

Q Is that correct?

A Correct, sir.

Q That Bendix Energy ~~and~~ Controls Division was reducing your gross profits on rotors, stators and brake parts from 27 percent gross profit to 16 percent gross profit?

A Rotors, stators and --

Q Brake parts?

A That's in my handwriting, isn't it? No? That's your -- you're reading ~~for~~ from a deposition. I thought you were reading from my notes.

Q No, I'm not reading from your notes.

You are concerned about brake parts?

A I guess I did.

Q The answer is that you are asked to assume that?

A I made that assumption, yes.

Q Okay.

A I think it was rotors, stators and generators, but I can't recall. I guess that's --

Q Were you asked to make any assumptions

concerning Standard's inventory write-off policy?

A Yes sir.

Q What assumption were you asked to make in that respect?

A I was asked to assume that they had written off over the -- I believe the years were 1962 or 1963 through 1968, $136,985, and also assume that their stated policy was no movement in two years, you write off 100 percent. I think that in substance was what it was.

Q Any other assumptions?

A Not that I can recall at the moment.

Q Well, let me ask you this. Was one other assumption that in the determination of what you would pay for it is the fact that you assumed that you were buying a growth company?

A That is correct, yes.

Q Now, I've been through a list and according to my list they total seven, and let me just recall them for you because I want to ask you a hypothetical question based on what your judgment might be if certain of these assumptions were eliminated. Okay?

A All right.

Q One is the Whittaker cutoff on the 747. Two, eventually no sales of Whittaker products. Three, Navigation

and Controls would be doing the direct stocking on the 747's. Four, the Navigation and Control change in the discount rate. Five, the Energy ~~and~~ Controls change in the discount rate. Six, the write-off policy. And seven, assume a growth company.

A The write-off policy --

Q Inventory write-off policy.

A Yes. Was what?

Q That was number six?

A Yes.

Q And number seven was the assumption about it being a ~~gross~~ growth company.

A Right.

Q Okay. Now as of December 1968, if you were only making the last four of those assumptions, would that change your opinion as to the value of Standard Aircraft?

A The last four? Can we state those?

Q The first three -- let me go through it again.

Whittaker on 747's, total cutoff of Whittaker, Navigation and Control's direct on the 747's; eliminate those assumptions.

Only make the following four. Navigation and Control change in discount rate; Energy ~~and~~ Controls change in discount rate; Inventory write-off policy; growth company.

Carolla-cross

You are only making those four assumptions and the date that I am asking you about is December -- the end of December 1968.

Would your opinion be in any way changed?

A Not appreciably.

Q Excuse me?

A Not appreciably.

Q At all?

A No, I don't think I would appreciably -- I'd like to review that last four again, however.

Q Okay.

A These are the only things that are going to take place?

Q That's right.

A Okay.

Q Or that have taken place.

A Yes.

Q Navigation and Control, a change in the discount rate.

A Yes.

Q Energy Controls, a change in the discount rate.

A Yes.

Q The inventory write-off policy.

A Was adhered to?

Q Right.

And the assumption about your buying a growth company.

MR. ABRAMS: I really would like some clarification. You want the witness to assume that the write-off policy was what he said he was asked to assume?

MR. BLUMSTEIN: Correct. A hundred percent write-off with no sales in two years with a total being $135,000 for 1962 through 1969.

MR. ABRAMS: Wait a minute.

THE COURT: Wait a minute. I am confused.

MR. ABRAMS: That's not what the witness has testified to or anything that's been in this case -- this case is about.

The witness said, as I recall it, that he was asked to assume or he was told that that -- while Mr. Bollo said that there was a two-year, 100 percent write-off policy, in fact there was a different policy, and I think he told you what he was asked to assume or was told what that different policy might be.

In some years there was nothing written off because the policy wasn't followed. That's my recollection of what he said.

MR. BLUMSTEIN: All right.

THE COURT: I am not clear. Do I understand you to say that you are eliminating one, two, three, and basing this on four, five, six, and seven?

MR. BLUMSTEIN: Correct.

THE COURT: But what's going to happen to four, five, six and seven? They drop out?

MR. BLUMSTEIN: No, they are staying in. I want him to continue.

THE COURT: One, two, and three are out?

MR. BLUMSTEIN: Yes.

THE COURT: You want to know whether his opinion would be changed?

MR. BLUMSTEIN: As of the end of December, 1968.

THE COURT: If he was basing it only on the assumptions contained in four, five, six and seven?

MR. BLUMSTEIN: Yes, that's correct.

THE COURT: Do you understand that now, Mr. Carolla?

THE WITNESS: I believe so, yes.

BY MR. BLUMSTEIN:

Q Okay?

A No, it wouldn't be changed appreciably,

Mr. Blumstein.

If I recall correctly, you said that the discount change of Navigation and Controls would be one of the factors that would remain?

Q Correct.

A The discount structure of Energy Controls' change would be one assumption that would remain?

Q Correct.

A No, the discount change, no sir, I wouldn't change my mind appreciably at all.

Q Okay.

By the way, in this case, in connection with your opinion, were you told anything or did you learn anything about the buyer, the actual buyer of the stock, the Pittsburgh Coke and Chemical Company?

MR. ABRAMS: Your Honor, I object to the question.

I really think that the question is so sweeping, did he learn anything about Pittsburgh Coke in connection with the opinion. I can't imagine that a meaningful answer could possibly be given.

MR. BLUMSTEIN: He gave one at his deposition. I think he can give the same one today.

MR. ABRAMS: I don't think it was meaningful

then.

BY MR. BLUMSTEIN:

Q I just want to know, you were asked to give an opinion about the value of Standard, and what I want to know is, was the question put to you, what would you, Mr. Carolla, pay for Standard or what should Pittsburgh Coke have paid for Standard?

A I think it was put in the context of what would you pay for it, Mr. Carolla.

Q I see.

It was not what Pittsburgh Coke (would pay)?

A No sir.

Q And for example, did anybody say anything to you about whether Pittsburgh Coke had ever before been in this business?

A No, they didn't say anything but something that I already knew.

Q You knew that they hadn't been in the business?

A Yes, I did.

Q And no one discussed it with you what Pittsburgh Coke's thinking was about why they should acquire this business?

A No.

The only thing I could know is what I could conclude.

Q Okay.

A They thought they were buying a growth company.

(Continued next page.)

CROSS-EXAMINATION

BY MR. BLUMSTEIN (Cont'd):

Q Okay.

Now, I want to be sure of one thing. I think you said in response to a question that was asked of you by Mr. Abrams that you had not sought to develop any price earnings multiple in connection with the opinion you were going to express?

A I did not get into that, no, sir. Not in my analysis.

Q You did not. At all?

A No.

Q I see. Okay.

Now, I think you also said that based on the information that you had, the company was going to be losing some three-plus million dollars worth of sales out of nine million total?

A Yes.

Q What I want to ask you is, given the time frame you were talking about, December, '68, September, '69, did you make any projection as to how far down the line from that point all of these sales would disappear? There would be a total loss?

A I figured somewheres I'd say depending upon the

vendor and the timing and so on, during the time frame of somewhere between one to two years.

Q Now, I would like you to, making all of the assumptions you previously made -- I don't want to change any of those. I just want to add one more in the hopper, okay, and ask you whether that would change your opinion.

Do you understand what I'm going to do?

A I don't think so.

Q Just going to add one assumption.

A Add one ~~of~~ to those that I made?

Q Correct.

A Okay.

Q Assume that in the year 1969, Standard would pick up a new distributor it had never previously represented and assume for the moment that it was reasonable to project that, by the end of 1972, the sales of that distributor --

THE COURT: Do you mean a manufacturer?

MR. BLUMENSTEIN: Excuse me.

THE COURT: Do you mean a manufacturer?

MR. BLUMENSTEIN: I mean a manufacturer.

Thank you, your Honor.

THE COURT: All right.

Q The sales of that manufacturer would exceed $1,000,000. Okay?

A Yes.

Q What I want to ask you is, making that assumption, would that have any affect upon your opinion?

A By 1972?

Q Right.

A No, I don't think it would change my assumptions.

Q Wouldn't change your opinion at all?

A Wouldn't change my opinion. I beg your pardon?

Q At all?

A Not appreciably, no.

Q Well, you use the word "appreciably." I want to pin you down now. I'm sorry.

A All right.

Q At all?

A No.

Q Would it be the same?

A It wouldn't change my opinion.

Q Would not change your opinion. Okay.

THE COURT: Well, may I ask this?

The sales don't mean anything. It's what they get out of it. Where is that factor?

MR. BLUMSTEIN: Well, I understand --

THE COURT: Isn't that what matters?

MR. BLUMSTEIN: I understand Mr. --

THE COURT: What do you make on it?

MR. BLUMSTEIN: I understand Mr. Carolla to be saying that one of the factors that entered into his opinion was this loss of three point million sales down the road.

THE COURT: It wasn't just loss of the sales. It was with the commission that went with them.

MR. BLUMSTEIN: I understand that. I understand that, your Honor.

THE COURT: Right?

MR. BLUMSTEIN: But I am just trying to test out the significance of that factor to his opinion.

THE COURT: Well, I know, but I mean, in the one case the sales loss and the commission loss are known factors.

Here you have just stated the sales growth, one million, without indicating what the rate is. Maybe built into your assumption was the idea that some standard rate of commission, I don't know whether there is or not. I don't know whether this witness perhaps may have assumed that.

MR. BLUMSTEIN: He's answered the question. I'd like --

THE COURT: It won't change.

MR. BLUMSTEIN: Whatever I have to say about it I think I can reserve for a future time.

THE COURT: All right.

BY MR. BLUMSTEIN:

Q Let me ask you this, just one more question. On this sales problem, assume that by 1972 the gross sales of the company would, in gross terms, exceed what they were in 1968.

A Exceed?

Q Exceed, yes. Would that have any impact on your opinion?

MR. ABRAMS: The opinion again is an opinion as of 1968?

MR. BLUMSTEIN: Correct.

MR. ABRAMS: How would he value it in '68?

MR. BLUMSTEIN: If he had made that assumption in '68.

MR. ABRAMS: All right.

THE WITNESS: State that again, please.

Q Assume, making all your other assumptions, assume that by the end of 1972, the gross sales of the company had reached the point where they exceeded the gross sales for the year 1968.

Would that change your opinion in any way?

A No.

THE COURT: By that amount?

MR. BLUMSTEIN: Excuse me.

THE COURT: By ~~the~~ one million?

MR. BLUMSTEIN: No, no. Just exceed it. Just exceed it.

Q Now let me show you -- well, let me have it marked first.

THE CLERK: A five-page document marked for identification as Defendant's Exhibit Q.

(So marked.)

Q Would you look at --

MR. FOSTER: Do you have a copy for us?

MR. BLUMSTEIN: I think you have it. Here it is.

Q Defendant's Exhibit Q for identification and would you see if you can identify that?

I'm sure you can.

A Yes.

Q Those are some handwritten notes that you made?

A That's correct.

Q I'd like you to turn to the last page, the

very last page.

By the way, can you tell us when you prepared these notes? Do you have any recollection?

A I prepared them about September 5th and 6th.

Q 1974?

A Of this year.

Q Would you look at the last page, please?

A Yes.

Q And tell me what appears on that page? What does that data represent?

A Oh, it says proforma P & L allowing for (1) the loss of Whittaker sales of a million four hundred fifty-five, loss of Bendix Navigation & Controls for a million six hundred ninety-two. Total three million one hundred forty-seven or percentage figures besides each one of those figures for --

Q Instead of reading it, because I will offer the -- let me offer the document in evidence, if I may.

MR. ABRAMS: I have no objection. I think it might be useful to just identify what it is for the record. But I have no objection.

MR. BLUMSTEIN: I want to ask him some questions about the last page. He did identify them as notes that he prepared.

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MR. ABRAMS: Excuse me. I have no objection.

MR. BLUMSTEIN: The only thing I want to question him about is the last page.

THE COURT: That's Q, Did I understand you to say?

THE CLERK: That's correct.

THE COURT: It's in evidence. No objection.

THE CLERK: Defendant's Exhibit Q, now marked in evidence.

(So marked.)

BY MR. BLUMSTEIN:

Q All right. Like I said, I don't want you to read what is on Q, but just to tell me, to identify the information and what it is that you were trying to suggest by those numbers.

A These are very rough notes, Mr. Blumstein.

Q Right.

A Basically what I was doing is going through a mental exercise on paper.

Q Correct.

A And to come to a couple of conclusions.

Q Yes. It says on top: Proforma P & L.

A Yes. I assumed that Standard would lose those sales, I took into account the reduction in gross profit

that they were going to have to cope with on the energy controls business.

Q Right.

A And brought a sales figure of $6,000,000, figured the gross margins, what the gross margins would be, assuming that the other gross margins remained the same aside from energy controls, came to a figure, I took their operating expenses at the '68 rate.

Q Correct.

A Of percentage to sales, assumed that they could hold their expenses at a percentage to sales rate and came up with an operating profit.

Q Of how much, sir?

A $87,410, I think is what the -- is what the number says, yes.

Q Of course that was before taxes?

A Yes.

Q I see you have the notation taxes but you never got that far?

A No.

Q Okay. Let me ask you this question.

I want to turn to the subject of inventory write-off policy. We've heard about a number of varying policies. I think there was one that was as short as a shortage six months and some that have extended two years. And so forth

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and so on.

A Yes.

Q Within that frame work, within those variations, do you think that there is room for a businessman making a reasonable judgment based on his own experience?

A You mean, as it relates to establishing a formula?

Q Yes.

MR. ABRAMS: I object to the form of the question. I didn't get it as a question.

THE COURT: Let's read it back.

(Question read.)

Q Maybe I can reframe it and solve all the problems.

Taking six months as the -- as one limit, two years as the other limit, in terms of when you write things off, if there have been no sales, do you think that it is within that -- within those limits that the actual formula that a company might apply can be based on the reasonable judgment of a business man experienced with that company?

A Based within that frame work?

Q Yes.

A Yes, I think that is a reasonable question.

Q That's all I wanted.

By the way, in your experience in this business,

if one of these formulas is applied, does it result in some kind of an average inventory write-off on a yearly basis?

Do you know what I mean?

A I'm not quite sure that I do, sir.

Q If you are using one of those formulas, let's say a two-year formula, on a percentage basis when you look at the inventory (or) write-off in any year, versus inventory, how does it come out? Is there any -- are there any guidelines, any standards?

A Standards?

Q Is it about three to four per cent?

A Oh, you're talking about my personal rule of thumb?

Q Yes.

A Oh, yes, I've used a personal rule of thumb, that gives me a general indication that it probably is going to be all right or it's probably not going to be all right. And that is to take a look at their average write-off over a period of years and if it ranges somewhere between three to four per cent, that in my experience has been what I call reasonably normal assuming that you have a decent formula.

Q Let me turn to K for a minute. I'm not -- not K. What have we marked that? Q, I think.

THE CLERK: Q.

Q Would you take a look at the second page?

A Of my notes?

Q Yes.

A May I have some water, please?

Q Surely.

A Thank you.

(Continued on next page.)

6fw

Q Have you got page 2?

A Yes, sir.

Q There is a paragraph there and I would like to read it to you:

"Reported Inventory Writeoff Policy, 100% Writeoff if no sales in two years, is very liberal as it does not allow for excess inventory devaluation and/or writeoff."

A Yes.

Q Could you tell me what you meant by that paragraph?

A Well, basically, what I meant by that paragraph is that even seeing a formula of that nature, I would still want to get into the inventory in spades if I was going to buy the company.

That does not imply that the two-year rule would not be adequate, but if not allowing for any devaluation of excess material would make me want to look at it very closely.

Q So even if you had been told in the situation that there was such a two-year rule, you would still want to make a further investigation of the content of the inventory; is that correct?

A If I was going to buy the company, Mr. Blum-

stein, that's right.

Q If you were going to buy the company?

A Yes.

Q By the way, I just want to get one thing clear on the record:

I take it that you have not examined any other information concerning the operation of Standard beyond the year 1969?

A Yes.

Q Let me ask you this: If an inventory is overvalued because, ~~an im~~proper writeoff policy has not been used, what impact does that have upon the financial condition of the company, in your judgment?

A If it is overvalued --

Q Yes. In other words, if the inventory is overvalued, if there is excess inventory, what impact does it have on the financial condition of the company?

A I would say that the net worth is overstated.

Q If there have been insufficient writeoffs taken in any given year, what impact would that have on the profit and loss statement of the company for that year?

A If there are insufficient writeoffs taken, of course your profit and loss statement, your profits are going to be higher.

Q That is your profit before taxes; is that correct?

A Yes.

Q And I take it that if your profit is higher before taxes, you will be paying more taxes?

A Yes.

Q Let me ask you this question: In connection with the acquisitions that you made, or that you were connected with when you were with Van Duzen, was one of the things you might look at, the rate of inventory turnover?

A Yes, sir.

Q How would you, as a mechanical process, calculate the turnover rate?

A Well, as far as I am concerned, turnover is based upon the total inventory you have at the end of the year versus your total cost of goods sold for that year.

Q Do you have any rule of thumb as to what an adequate turnover rate might be?

A Well, I think an adequate inventory turnover in the whole sale supply business, which is the one that I am most familiar with in this particular case --

Q That's the only one I am talking about.

A -- ranges, depending upon the type of business that you have, ranges somewhere -- you are talking about an

adequate amount, right?

Q Right.

A It ranges somewhere between 3-1/2 to 4.

Q Let me ask you this: Is it better from your point of view as a buyer that it is turning over faster or slower?

A It's better as a buyer that it is turning over faster; it is also better for the owner.

Q Would you be willing to express the opinion that Standard's inventory during the years that you looked at the company was grossly overvalued?

MR. ABRAMS: Your Honor, I would object to the question.

A I don't follow you.

MR. ABRAMS: First, because Mr. Blumstein has not put in whatever assumptions he wants the witness to read in, and, second, because the word "grossly" is a grossly legalistic word.

THE COURT: I am not clear in my own mind what he is supposed to assume.

MR. BLUMSTEIN: I would like him to assume that the inventory writeoff should have been, as it was on that exhibit that was introduced through his testimony, that 400 and -- whatever it was --

THE COURT: You are talking about a relationship of inventory of Standard to Standard's sales volume; is that what you are talking about?

MR. BLUMSTEIN: I think I will withdraw the question.

THE COURT: It is not clear.

MR. BLUMSTEIN: It is getting late and --

THE COURT: He hasn't examined the inventory and he has no basis by his own examination to --

MR. BLUMSTEIN: That is not what I was getting at. I will withdraw it anyway, your Honor.

Q I take it that in 1970 you were still with Van Duzen?

A Yes, sir.

Q And you were generally acquainted with what was going on in the aircraft business and the aircraft parts business in 1970?

A Yes, sir.

Q Were there in your judgment any significant adverse economic developments during that period?

A Yes. I think -- Not I think, there was.

Q There were.

A We were having, I guess, what is known as the aviation recession.

Q And that started in 1970?

A Well, there are mixed opinions on that. My opinion, I think it started in the latter part of '69 and reached its peak, of course, in '70-71.

Q That recession had an impact on Van Duzen's earnings, did it not?

A It had an impact, yes, sir.

Q Indeed, Van Duzen's earnings per share were cut in half from 1968 or 1969 to 1970-1971; is that correct?

A I really don't -- I can't remember. I would have to take a look at their chart which they have.

MR. BLUMSTEIN: Let me just mark this for identification, please.

THE CLERK: A 6-page document marked for identification as Defendant's Exhibit R.

(So marked)

Q Let me show you what I have marked as Defendant's Exhibit R, this Van Duzen 1971 annual report.

Take a look at that and see if it refreshes your recollection as to what was happening to the Van Duzen earnings during those years.

A Yes, they dropped.

Q They dropped?

A Sure it did.

Q Quite considerably?

A Yes, indeed. I just didn't know to what extent, Mr. Blumstein.

MR. BLUMSTEIN: If I might have one moment to check with my colleagues, I think I am finished.

(Pause)

MR. BLUMSTEIN: I have no further questions.

MR. ABRAMS: I have two questions, your Honor. I do want to express our appreciation for allowing Mr. Carolla to go home tonight.

REDIRECT EXAMINATION

BY MR. ABRAMS:

Q You were asked by Mr. Blumstein whether it would have changed the opinion that you gave earlier this afternoon if you had added one assumption onto the other matters which you would also assume, and that what you should add on was that in 1968 you would be told that in 1972 gross sales would be higher than they were in '68, and you said that that would not change your conclusion.

Why would it not change your conclusion?

A Well, I believe the first figure was $1 million higher. First, well, it wouldn't change my opinion, because (1), Mr. Blumstein didn't tell me how much I was going to make on it. But, nevertheless, historically in the

aviation industry you couldn't make up sufficient gross profit on $1 million worth of sales to offset the 3 point something or other million dollars worth of sales we are talking about; plus the fact it is going to cost you a lot of money to gain those sales.

That is why I wouldn't change my opinion. As it relates to the other assumptions that he gave me, it was assumed that none of these happened, and I believe he said in 1972 you were going to exceed the sales that you have, and the reason for that is substantially the same, because in looking at all of that stuff, I would have to take into consideration what it was going to cost to do it, and how long it is going to take to replace it.

Q My other question is this: Directing your attention to Plaintiff's Exhibit 12, 13, 14 and 15, which are the two Whittaker internal documents, the Jerry Bollo memorandum, and the TWX to Jerry Bollo of February 6, 1969, if you had been shown these documents at any time prior to September 18, 1969, what would you have concluded as to Standard's future with Whittaker?

A I'd say that Standard's future was coming to an end.

MR. ABRAMS: I have no further questions, your Honor.

RECROSS EXAMINATION

BY MR. BLUMSTEIN:

Q Mr. Carolla, am I correct that in response to Mr. Abrams question you were saying that -- maybe I am not correct -- but given the assumptions that I gave you, you might want to take a look at more data to find out whether your opinion was correct?

A I don't follow you.

MR. ABRAMS: I object to the question.

MR. BLUMSTEIN: Let me try it again.

Q You recall that I gave you these additional assumptions, and you said that it would not change your opinion.

A Yes. There were four assumptions that would remain and three would not.

Q That was one change I made,and then I added a couple, about --

A The other assumption was that all of these things would happen -- but sales would exceed, right?

Q And you said to me that would not change your opinion?

A That's right.

Q What I am trying to establish is that are you telling me that if those things happened you might want to

make a further investigation before you came to the conclusion that you would not change your opinion, or can you tell me now flatly that you would not change your opinion?

Do you understand what I am saying?

MR. ABRAMS: I object to the question.

Counsel put a question to the witness which had an assumption in it. If he wants to add other assumptions, that could always change anyone's answer.

But I don't think it is fair to ask the witness the question as phrased, and I object to it.

THE COURT: I am not clear what you are trying to get at. I am not going to profess to be the reporter here, but to me the message came across very clearly: If he added the $1 million increase in sales, with all seven assumptions, that is what you directed him to, first of all, it would not change his opinion, he said, because you did not tell him how much money he was going to make on it; that was the question I raised with you.

There was no information as to how much he would make on that million.

Then he added something else again, he said it would not be enough to offset the loss of the

$3-1/2 million, and in addition, to get the $1 million you would have to assume there would be costs, another unknown.

MR. BLUMSTEIN: What I am trying to find out, your Honor, is that if I had given him that assumption, would he have made some inquiry as to what the profit was and as to what the costs were.

MR. ABRAMS: I don't think you can ask the witness to make an inquiry out of a question.

THE COURT: First of all, I agree with that because if I remember what your added ingredient was, it was by 1972, so you are talking about three years span of time, which is looking retrospectively into the future, if one can put it that way, and so what kind of investigation could you make with that assumption? You just take it as you are given it, don't you?

MR. BLUMSTEIN: Let me, if I may, just try once more.

Q If I had given you that assumption about a $1 million increase in sales over that three-year period, would you have been interested in knowing what the profit on that $1 million in sales would be, before you determined whether or not to change your opinion?

A Sure I would like to know what the profit is, because I was trying to convey to you, Mr. Blumstein, that it would be the first time in the history of aviation that you would ever make that much profit on a million bucks worth of sales, and I don't think that that's very likely; that's what I was trying to convey to you.

MR. BLUMSTEIN: I think that's it.

THE COURT: I am going to suggest, though it may not make a difference to you, that you not get here before 10:15 tomorrow. In fact, I won't even be mean with you if you are a little later than that, because I have no way of knowing that this motion will be disposed of in fifteen minutes, or that I won't have -- this is Friday -- criminal matters.

Be ready to go on by 10:30. That will make it clean and unambiguous. Come in at 10:30.

(Whereupon, at 6:00 p.m., the trial was continued to October 18, 1974, at 10:30 a.m.)

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